



# **NAVAL POSTGRADUATE SCHOOL**

**MONTEREY, CALIFORNIA**

## **THESIS**

**CREATING A COORDINATED GAME PLAN:  
IMPROVING TEAMWORK BETWEEN LAW  
ENFORCEMENT AND THE CALIFORNIA NATIONAL  
GUARD**

by

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March 2007

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GUARD**

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## **ABSTRACT**

The author of this thesis contends that the legislative mandate for National Incident Management System compliance has created an efficient and expeditious relationship between civil authorities and military resources, however a lack of information regarding each other's roles and capabilities, coupled with differences in culture, communications, logistics, and command and control structures has resulted in sub-par interaction in actual responses and exercises since the attacks of September 11, 2001. Emergency responders at the local and state level have frequent interaction, but clear protocols, guidelines and exercises are required to create the same level of teamwork with the National Guard. Because of the variety of controlling legislation and political priority governing each state's National Guard, this thesis offers recommendations for improving the interaction between California law enforcement and the California National Guard through a process of creating common response protocols, training, and command and control exercises.

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## I. INTRODUCTION

One simple but difficult principle provides the opportunity for the United States to achieve *never again*. That is: The will to win. The will to do whatever is necessary with the Constitution to protect America separates us from more death and destruction within our shores. It is the will to sacrifice; to persevere in the face of adversity and criticism just as generations of Americans did before us. It is no guarantee, but if we falter, grow complacent, or fail to do what we can, we give the terrorist network opportunities that, with time and patience, they will exploit to kill more innocent Americans.<sup>1</sup>

In 2004, some of the best professional players in the world comprised the United States Olympic Men's Basketball team. The American team had never fallen short of winning a gold medal since NBA players were allowed to participate. Although they had the most talented players, they needed a come-from-behind victory just to win a bronze medal. Players with less talent, who knew how to play as a team, defeated them.<sup>2</sup> There is no question that America's military and law enforcement organizations are among the best on earth, but their interaction in actual responses and exercises demonstrates that talented individuals and agencies fall short of expectations when their efforts are not coordinated. Instead of an effective unified command, the military and civil participants can be reduced to performing like all-stars who cannot play to their potential because they do not fully understand their role as teammates and have not practiced to the point of confidence.

In athletics the difference between a winning team and a losing team is often that the losing team practices until they finally get a play right, while the team that successfully deals with the opposition practices until they do it right every time. The reality of catastrophic natural disasters or terrorist attacks is that local and even state authorities may have to rely on military and other federal resources in the first critical hours of a response. Law enforcement and military emergency responders must have the

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<sup>1</sup> John Ashcroft, *Never Again: Securing America and Restoring Justice*. (New York: Center Street Press, October 2006), 279-280.

<sup>2</sup> "Dream Team Surrender Title," *BBCSPORT*, [Newsvote.bbc.co.uk/sport2/Olympics\\_2004](http://Newsvote.bbc.co.uk/sport2/Olympics_2004) [Accessed Feb 13, 2006].

same commitment to planning and practicing for a unified response if they expect to maximize the effectiveness of their resources to save lives and protect property given the magnitude of the threats that face us.

## **A. PROBLEM**

On an average, the federal government needs 72 hours to marshal national resources in response to an incident that has surpassed a state's response capacity. Better planning at a regional level could prevent such shortfalls in disaster response. Such efforts should take the form of state-based regional programs that focus on ensuring that states are prepared to sustain themselves and that facilitate cooperation among federal, state, and local efforts.<sup>3</sup>

Two associated problems arise when local law enforcement and military assets are deployed to a domestic event. The first is the lack of a clear, consistent, and practical understanding of legal authority permitting and restricting military assistance to, and interaction with, civil authorities. The second is when cooperative action is required, confusion and friction are created by the difference in culture, protocols, terminology, communications and systems between law enforcement authorities and their military counterparts. The dual state/federal role of the National Guard presents additional complications.

The historic pace of federal, and especially military response, to police and sheriffs' agencies was acceptable because of the scope of the threats faced by local jurisdictions. Because recent experiences including terrorists using planes as weapons of mass destruction, the most devastating natural catastrophe in American history, and the real threats of chemical, biological and nuclear devices, a 72-hour response is no longer acceptable.

The question this thesis will attempt to answer is whether a common emergency management structure can be identified that can be adapted to a terrorist incident or natural disaster when the California National Guard and possibly federal military resources respond to a mutual aid request from local authorities.

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<sup>3</sup> Jill Rhodes, "State and Regional Responses to Disasters: Solving the 72-Hour Problem,, *Heritage Foundation*, No. 1962 (August 21, 2006), 1.

On April 27, 2006, the Little Hoover Commission released a report entitled: *Safeguarding the Golden State*. The Commission is a bipartisan and independent state agency charged with recommending ways to improve the performance of state programs. Chairman Michael E. Alpert concluded, “Without immediate action by the State of California, millions of Californians are at risk in a catastrophic disaster.” The report also states, “State law and federal funding provisions require state and local agencies to assess preparedness needs, develop improvement plans and participate in training and exercise programs but neither OES (Office of Emergency Services) or OHS (Office of Homeland Security) ensures that state or local agencies are prepared. The Commission further stated that the Office of Emergency Services has not ensured that state agencies are making progress toward preparedness goals.”<sup>4</sup> It is consistent with the direction of this Commission report that state agencies such as OES, OHS and the National Guard take an active leadership role in creating a coordinated approach to providing military support to law enforcement.

## **B. SCOPE**

This thesis deals with the practical application of the National Response Plan and National Incident Management System to joint law enforcement and military responses to insurrection, domestic terrorism or natural disasters. The problem exposed by the response to Hurricane Katrina is that emergency response systems used by the military, law enforcement, and other public safety and health responders are not always compatible to a “unified command”. The military is trained to operate according to the doctrine of “unity of command,” while police agencies apply participatory leadership under a “unified command.” A review of prior events demonstrates that when jurisdiction for an event is clearly federal or civil, both sectors perform admirably, but little has been written to address the grey area of shared command scenarios, which are likely in the transition from an initial local response to what becomes a federalized event.

The primary target audience includes the Governor, California’s National Guard, Office of Emergency Services, and Office of Homeland Security. In addition, the California State Sheriffs’ Association and California Police Chiefs’ Association should

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<sup>4</sup> Safe Guarding the Golden State (Little Hoover Commission, Sacramento, CA), April 27, 2006, Report #184, 34-35.

be included as key stakeholders. Any advancement in protocols, practices and training should be of interest to USNORTHCOM and the Department of Defense. Members of the California State Assembly or Congress may also have an interest if legislative changes, or budgetary support, are required. The desired outcome is to establish protocols, change existing systems or law, and chart a systematic course of instruction and training that will guide local, state and federal agencies through the dynamic and complex situations posed by National Guard mutual aid deployments in California.

The limited scope and time of this thesis will not allow for a detailed discussion of all of the areas of incompatibility between active duty forces, the California National Guard, and local law enforcement. For the same reason, it is impractical to address the relationship between the states and the federal government because each state governs their National Guard differently. This thesis will be a success if it can recommend a process for creating guidelines for military support that will allow various jurisdictions to train and respond in a coordinated fashion maximizing their ability to protect the public in the event of a terrorist attack or major natural disaster. If a structure for creating more effective coordination can be identified at a state level, hopefully it can be used as a model for development of similar models in other states.

### **C. ARGUMENT**

The 9/11 Commission stated in their final report, “Although there is awareness of and some training in the Incident Command System, Hurricane Katrina demonstrated the absence of full compliance during a multi-jurisdictional/statewide catastrophe and its resulting costs.”<sup>5</sup> Confusion over command, control, and authority are some of the key barriers to collaboration during an emergency. The objective should be to create applications of NIMS that can be used to provide clear direction for law enforcement and the National Guard in virtually any response scenario, including dynamic situations during which jurisdictional authority changes.

Differences in technology and terminology also contribute to a lack of coordination in a joint response. Systems are available that may have the potential of addressing the technical incompatibility. While all of the technical differences may be difficult and expensive to resolve, protocol answers such as the use of “plain speak” or

<sup>5</sup> Thomas Kean, *Final Report on 9/11 Commission Recommendations*, December 5, 2005, 1.

the use of a Virtual Command Center could improve the transmission of information. Any resolutions that, are proven successful on a state level, could have the potential for replication in other jurisdictions.

In addition to the criticism of the failure to fully implement the Incident Command System by the 9/11 Commission, other inputs reinforce the fact that there are coordination problems when military resources support state and local responders. The Wall Street Journal reported that the Bush administration believes “some states can’t deal with large scale disasters.”<sup>6</sup> The same article credits USNORTHCOM commander, Admiral Timothy Keating, with telling Congress that active duty forces should be given complete authority for responding to catastrophic disasters. Finally, the report quotes Governor Jeb Bush of Florida as saying, “If you federalize, all the innovation, creativity and knowledge at the local level would subside.” With a power struggle at the highest levels of government, it is no wonder that authority in a multi-jurisdictional response is problematic.

Conflicts do not exist only at the political level. Assistant Defense Secretary for Homeland Defense Paul McHale stated in regards to the Katrina military response, “The planning of NORTHCOM was first-rate but was not well known to the National Guard. The Joint Staff didn’t have a grasp of the National Guard’s plans. The Defense Department must first resolve the poor coordination between the National Guard and USNORTHCOM and then reconfigure the National Guard for catastrophic response.”<sup>7</sup> The combined outcome of these problems is instead of having an effective unified command, the military and law enforcement responders can be reduced to performing below their potential.

The recent federal response to Hurricane Katrina created confusion about the authority of the military to provide civil support, absent a mobilization of the National Guard by the Governor of Louisiana or her timely request for federal assistance. President Bush finally had to consider using his powers to authorize a military response

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<sup>6</sup> Robert Block, “Local and Federal Authorities Battle to Control Disaster Relief,” *Wall Street Journal* (December 8, 2005), 1.

<sup>7</sup> Pam Zubeck, “NORTHCOM Official Lists Katrina Lessons,” *The Gazette* (October 22, 2005).

to restore order and quell looting and violence in New Orleans. As a result, the President asked for broader federal authority in assisting with future natural disasters.

The Center for Asymmetric Warfare discovered that training exercises involving simulated terrorist attacks requiring a military and law enforcement response also revealed confusion and incompatibility between emergency management systems, communications, chain of command, and terminology. A simulated terrorist attack on a deep-water port that serviced a civilian harbor and the Port Hueneme Naval Base demonstrated that the various disciplines worked most effectively only operating independently of the other. Following one of these exercises, a law enforcement incident commander recalled that military and law enforcement participants accomplished their missions in the exercise, but without coordination, communication, or a clear understanding of a unified command.<sup>8</sup> The United States Northern Command is currently working on protocols for law enforcement working in cooperation with the military to try to eliminate some of the problems experienced in the aftermath of Katrina.<sup>9</sup> To this author's knowledge, no similar effort is being undertaken to develop specific and broadly understood protocols for the military when acting in support of civilian authorities.

#### **D. RESEARCH QUESTION**

How can law enforcement and National Guard forces improve coordination in a dynamic unified command response to terrorist attacks and natural disasters?

#### **E. SIGNIFICANCE OF QUESTION**

The hurricanes that battered the Gulf States in the fall of 2005 demonstrated that the relationship between local, state and federal agencies responding to natural disasters was plagued by confusion and inefficiency. Terrorist event training exercises undertaken by USNORTHCOM and the Center of Asymmetric Warfare revealed similar operational difficulties.<sup>10</sup> The DOD has assigned staff to develop protocols for law enforcement when supporting the military in an attempt to improve the situation. In California and many other states, law enforcement has no standard protocols or guidelines for the National Guard when it assists law enforcement authorities. This author has not been able

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<sup>8</sup> Martin Rouse (TOPOFF Incident Commander), "*Critique of Asymmetric Warfare Training Exercise*" (November 10, 2005), 1.

<sup>9</sup> Scott Gordon, (NORAD/ U.S. NORTHCOM), interview by author, November 15, 2005.

<sup>10</sup> J. E. Beakley, *Organizational Response Initiative*, Center for Asymmetric Warfare.



to locate an existing plan for transfer of command between civil and military responders as circumstances change in an evolving situation. If another major terrorist event occurred in the United States, it could very well entail complex jurisdictional and operational problems involving the interaction of federal, state, and law enforcement authorities. It could also require that the primary responsibility might shift from local to federal responders and eventually back to civil authorities.<sup>11</sup>

## **F. METHODOLOGY**

While the problems are significant, California law enforcement agencies and the National Guard emergency responders have proven to be motivated, well-trained and highly effective when acting independently without the complication of combining local, state and federal resources. With concerted effort, it is inevitable that these various disciplines can and will forge an effective cooperative effort. The goal is to accelerate that process.

### **1. Problem Identification**

The first step is problem identification. Reviewing the after-action reports of actual joint responses and combining that information with the input of subject matter experts can best isolate the problems. In California, the Adjutant General of the National Guard, the Director of Homeland Security, the Director of the Office of Emergency Services and representatives of the major law enforcement must work together to identify problems of coordination and work towards recommending solutions.

### **2. Analyze Input for Potential Solutions**

The second step will be to work with major stakeholders to propose solutions. Remedies not requiring legislative action or additional funding will be examined and implemented first, with other longer-term solutions directed to the appropriate funding agencies or legislative bodies. Discussions were held regarding the level of coordination between local, state and federal resources with participants and planners of the Center for Asymmetric Warfare exercises. The incident commander at the Port Hueneme CBC dirty bomb exercise stated that the SWAT and EOD teams were very efficient, but the unified command did not comply with NIMS requirements. He felt it was basically several

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<sup>11</sup> James Petroni, *Asymmetric Warfare Training Lessons*, November 5, 2005.

agencies running their own command and control in the same building.<sup>12</sup> The Director of the Center for Asymmetric Warfare, who was one of the event planners of the TOPOFF exercises, agreed that coordination needed to be improved. He stated,

I've worked in the MSCA/DSCA field for many years, both with U.S. forces and foreign military audiences. Usually, the civilian sector has far less 'inertia', and for a variety of reasons, we give greater autonomy to field commanders. For one, our command chains are much shorter, and we rely less on the typically detailed plans that the military executes.<sup>13</sup>

There is no need to create a new system, because the National Incident Management System has already been designated as the standard for all domestic emergency responses. The problem appears to be the lack of uniform training of military and law enforcement resources, coupled with the need for specific applications of NIMS to joint military/civil missions. Specific protocols will be considered to accommodate for the differences in state regulations regarding the role of their National Guard units. This second phase will bring together those with actual or training experience that can remedy the difficulties experienced in the past.

### **3. Test Recommendations against the Experience of Key Stakeholders**

The third step will be to test those proposals against the experience and opinion of the key stakeholders needed to make the proposal work, and based on their input, refine several best practices that could be applied to joint emergency responses in the State of California. California is an appropriate place to test recommendations of stakeholders because of its size, complexity and the frequency of natural disasters. It is also the home of the Center for Asymmetric Warfare, which conducts federally funded federal joint civil/military training.

## **G. SUMMARY**

Despite the inevitable complexity and confusion that can occur when military resources respond to assist state and local emergency responders, there is every reason to believe that a clear and effective operational environment can be created. The foundation has already been established by the standardization of a National Incident Management

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<sup>12</sup> Martin Rouse (Commander, Ventura County Sheriff's Department), interview by author, Ventura, CA, November 20, 2005.

<sup>13</sup> James Petroni (Co-Director, Center for Asymmetrical Warfare), correspondence to author, December 3, 2005, 1.

System. USNORTHCOM is already working on protocols for civil agencies when assisting the military, so it is logical to expect that they would benefit from protocols when the roles are reversed.<sup>14</sup> A number of the stakeholders have expressed support for working toward eliminating the barriers to improve effectiveness in joint operations. The political and public pressure to avoid the conflicts experienced in the aftermath of Hurricane Katrina provides needed motivation to change the status quo.

## **H. POSSIBLE ANSWERS OR SOLUTIONS**

One possible solution is an amendment of the Posse Comitatus Act to resolve some of the jurisdictional questions by amending the controlling legislation. An amendment would require an Act of Congress based on recommendation from the appropriate sub-committees.

Another solution would be to supplement the National Incident Management System to include clear national protocols for both law enforcement and military authorities when working at all stages of a unified command. This would require focus groups representing all disciplines to create standards that would meet the requirements of national police, fire and public health associations, governors of 50 states, along with FEMA and the DOD.

The recommended option would restrict the scope of the thesis to a degree that would fit within the timelines required for this report by recommending a process to create protocols between the California National Guard and law enforcement first responders. This would eliminate the problem of involving all 50 states with authority over their National Guard resources. It would also deal with the issue in an environment in which it would be feasible to subject recommendations to the test of a tabletop exercise.

A meaningful solution requires that operational difficulties between the very different command and communication structures used by local and federal emergency responders be clarified and fall into general categories. Representatives of the different disciplines will need to work together to make recommendations at a level that will contribute to the formation of statewide protocols for the application of NIMS in a joint

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<sup>14</sup> Lt. Col. Scott Jeffrey (NORTHCOM Law Enforcement Liaison), correspondence to author, December 10, 2005, 1.

civil/military effort. Those recommendations should be refined, and guidelines will be refined through exposure to an extended group of stakeholders and by application in training exercises. Successfully tested guidelines and protocols will potentially contribute to the national discussion regarding civil/military coordination during major emergency responses.

The recommended solution would incorporate three specific outcomes. The first would be the commissioning of a stakeholder panel under the oversight of the Office of Emergency Services. The committee's mission would be to bring together California National Guard and law enforcement participants to review prior experience in mutual responses and training and recommend solutions to problems noted. They should also discuss future threat scenarios to project what type of pre-planning would benefit law enforcement agencies and the National Guard. As a result of these discussions, the final outcome of the committee would be to recommend guidelines and protocols to guide future National Guard support for law enforcement.

The second phase of the recommended proposal is to take the guidelines and agreements produced by the committee and create a training program to ensure the knowledge is passed along to all law enforcement and National Guard personnel qualified to work in an Emergency Operations Center or other Incident Command roles. The California Commission on Peace Officer Standards and Training would be the appropriate training provider. National Guard Liaison Officers and personnel designated by law enforcement would be required to complete the training in preparation for future exercises.

The third phase of the recommended proposal would be to reinforce and test the training through a series of tabletop or full-scale exercises. The exercises will produce experience that may require an updating of the committee guidelines and associated training. The exercises will also allow participants to utilize the guidelines in the regional environment where they are likely to serve as actual responders and decision makers. Finally, the regional interaction will involve the same National Guard and law enforcement personnel who will comprise an Emergency Operations team during a

response to an actual terrorist attack or natural disaster. The trust and mutual understanding created by this interaction will be as valuable as the guidelines that they follow.

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## **II. LEGAL AUTHORITY FOR MILITARY SUPPORT TO CIVIL AUTHORITIES: THEORY, AND PRACTICE**

Legal authority for military and especially National Guard support of law enforcement is not a topic that can be addressed with absolute certainty. Posse Comitatus is a dynamic issue that has been expanded by law, and interpretation is based on the need to meet a growing array of threats. The various governing federal laws and amendments will be examined in this chapter, along with insight into the reasons for expanding Presidential or congressional authority to activate the military. The California Military and Veterans Code will also be examined as the governing statute related to the California National Guard, because the scope of this thesis is restricted to California. In addition, case studies are brought forth as illustrations of the fact that existing legislation does not provide solutions to the operational problems created by deploying the California National Guard to support law enforcement.

### **A. POSSE COMITATUS**

The first step in evaluating the present status of National Guard support of law enforcement is to examine the existing federal legislative authority. The United States Code limits military assistance to civil authorities to only those circumstances authorized by the Constitution or Act of Congress. The power of Congress to authorize an expansion of the traditional role of the military, including the National Guard, has led to a growing potential for domestic military involvement in response to the national commitment to thwart the flow of drugs, combat terrorists, and respond to catastrophic natural disasters. Federal military authority and restrictions and the growth of the role of the military in a civil support role, especially in the aftermath of the terrorist attacks of September 11, 2001, is evaluated in this section.

The governing authority regarding military support of civil authority is Title 10 USC, which is limited by the Posse Comitatus Act, which states, “Whoever, except in cases and under circumstances expressly authorized by the Constitution or Act of Congress, willfully uses any part of the Army or Air Force as a Posse Comitatus or otherwise to execute the laws shall be fined under this title or imprisoned not more than 2

years, or both.”<sup>15</sup> The central question that arises from this Act is that Congress has allowed for a steadily increasing level of military support, especially for drug enforcement. Presidents have used troops to restore domestic order under the insurrection provision. Recently, President George W. Bush considered using this provision to use National Guard resources to restore order and assist in the rescue and recovery efforts after Hurricane Katrina devastated New Orleans.

## **B. STAFFORD ACT**

The Stafford Act also gives the President the authority to direct the Department of Defense to engage in support of disaster relief. Congressional action regarding the War on Terror has also expanded the definition of military support to include response to WMD incidents and application of military intelligence related to domestic terrorism, thereby greatly expanding the circumstances under which the Stafford Act may be invoked. The fact that the Act does not address the Navy, Coast Guard or Marines also raises unanswered questions.

## **C. EXPANSION OF POSSE COMITATUS AUTHORITY**

The traditional exceptions to the Posse Comitatus Act were greatly expanded by a provision included in the John W. Warner Defense Appropriation Act of 2006. Jeff Stein, editor of CQ.com, details the impact in the following quotes from his article titled “Fine Print in Defense Bill Opens Door to Martial Law”:

Signed by President Bush on Oct. 17, the law (PL 109-364) has a provocative provision called “Use of the Armed Forces in Major Public Emergencies.”

The thrust of it seems to be about giving the federal government a far stronger hand in coordinating responses to Katrina-like disasters. On closer inspection, its language also alters the two-centuries-old Insurrection Act, which Congress passed in 1807 to limit the President’s power to deploy troops within the United States. That law has long allowed the President to mobilize troops only “to suppress, in a State, any insurrection, domestic violence, unlawful combination, or conspiracy.”

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<sup>15</sup> Charles Doyle, “The Posse Comitatus Act & Related Matters: The Use of the Military to Execute Civilian Law”, *Congressional Research Service*, November 2000. 1.



Specifically, the new language adds “natural disaster, epidemic, or other serious public health emergency, terrorist attack or incident” to the list of conditions permitting the President to take over local authority — particularly “if domestic violence has occurred to such an extent that the constituted authorities of the State or possession are incapable of maintaining public order.” Since the administration broadened what constitutes “conspiracy” in its definition of enemy combatants — anyone who “has purposely and materially supported hostilities against the United States,” in the language of the Military Commissions Act (PL 109-366) — critics say it’s a formula for executive branch mischief.”<sup>16</sup> This level of Presidential authority is not universally accepted as expressed by this quote in the same article by Sen. Patrick J. Leahy, D-Vt., who warned it “subverts solid, longstanding *posse Comitatus* statutes that limit the military’s involvement in law enforcement, thereby making it easier for the President to declare martial law.”

#### **D. IMPACT OF POSSE COMITATUS EXPANSION ON LAW ENFORCEMENT AND THE NATIONAL GUARD**

The dilemma caused by the evolution of Posse Comitatus is that it requires law enforcement and the National Guard to constantly adapt to new responsibilities and growing levels of interdependence. The Air Force report on “Military Assistance to Civil Authority”<sup>17</sup> lists thirty-two separate actions that fall under the Posse Comitatus Act or subsequent legislative or presidential actions. Governors from various states voiced a far more restrictive view of the military role. Governors by comparison have far greater discretion in using National Guard troops under various state statutes. They also have a mutual aid compact that facilitates voluntary cooperation between various states.

The complexity produced by a local response of police, fire and public health authorities is magnified by the introduction of state and federal agencies, making an emergency response even more difficult to coordinate. Based on Department of Justice statistics, 10% of sheriffs’ offices serving populations over 500,000 do not have written plans for responding to terrorist attacks and 60% of sheriffs’ offices serving populations

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<sup>16</sup> Jeff Stein, *Fine Print in Defense Bill Opens Door to Martial Law*, CQ.com, December 1, 2006, 8:25am [Accessed December 19, 2006].

<sup>17</sup> Jack Clark, *Title 10-Title 32; The Basics –The Issues- The Possible Fixes*,” Air National Guard (2005): 1-14.

under 25,000 do not have written response plans.<sup>18</sup> In some scenarios, the conflict between homeland defense and homeland security exists. This brings into question jurisdictional issues between the Department of Defense and the Department of Homeland Security. If the Federal Emergency Management Agency is elevated to a cabinet level agency, as some have proposed, it could bring even one more competing agency into the mix. Title 10 and Title 32 of the United States Code gives commander-in-chief responsibility for the National Guard alternately to the Governors and the President depending on the reason for deployment. Major General Timothy Lowenberg points out the following conflicts that exist between state and federal authority:

1. The President has far less authority to deploy federalized National Guard troops to assist law enforcement than Governors because of the Posse Comitatus Act (18 USC 1385).
2. The President only has the authority to override a Governor regarding mobilization of the National Guard under the authority of the War Power Clause.
3. Many states have statutes that prohibit the Governor from using the Guard to plan, train, and exercise with other emergency responders.
4. Many state laws prohibit Governors from accessing the National Guard subject matter experts in the absence of actionable intelligence.
5. National Guard forces serving overseas frequently leave aircraft and equipment for replacement forces, leaving their states without those resources.
6. Federal call-out of a National Guard unit deprives the state of personnel and equipment for regional emergencies.
7. Cooperation between states is voluntary and subject to the approval of the Governor considering the request.
8. Both active duty commanders and state Adjutants General believe they should retain control of federal troops during domestic emergencies.
9. The BRAC commission recommendations will leave one-third of states without a military air unit and several states without a military aircraft.

Lowenberg summarized the previous concerns by stating, “The United States enters the 21<sup>st</sup> Century with unresolved questions about what our national defense and homeland security strategies should be. The life and safety of our citizens and the future of our

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<sup>18</sup> *Sheriff's Offices, 2003*, U.S. Department of Justice Bureau of Statistics, Washington D.C., May 2006, 1.

nation hang in the balance. Now, as at the founding of our nation, the states and central government must work in harmony to assure our collective safety and security. Governors as state commanders-in-chief must take a central role in shaping our national policy on use of military force.”<sup>19</sup>

#### **E. POSSE COMITATUS AND MILITARY SUPPORT AFTER 9/11**

The central question that arises from the Posse Comitatus Act, and more so since 9/11, is that Congress has allowed for a steadily increasing level of military support, especially for drug enforcement, and many of these support missions tread closely to law enforcement. Presidents have used troops to restore domestic order under the insurrection provision. Recently, President George W. Bush used this provision to employ National Guard resources to assist in the rescue and recovery efforts after Hurricane Katrina devastated New Orleans. Specifically, the President ordered in the 82<sup>nd</sup> Airborne Division as a show of force intended to assure local residents that order had been restored, which is clearly a law enforcement mission. The Stafford Act also gives the President the authority to direct the Department of Defense to engage in support of disaster relief. The War on Terror has also expanded the definition of military support to include response to WMD incidents and application of military intelligence related to domestic terrorism. The dilemma is that, in light of these expanded missions, neither law enforcement nor the military is certain about what the military has the authority to do in support of civil authorities, or how they will interact.

The changing nature of conflict and threats has caused some experts to question whether existing law is capable of providing clarity to the issue of civil/military interaction. Former FEMA Associate Director for Civil Defense Colonel John Brinkerhoff summarized his experience as a military and civilian expert in the application of Posse Comitatus by writing: “It is time to rescind the existing Posse Comitatus Act and replace it with a new law. It leaves plenty of room for people to do unwise and perhaps unlawful things while trying to comply with their particular version. It certainly does not provide a basis for defining a useful relationship of military forces and civil authority in a

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<sup>19</sup> Major General Timothy Lowenberg, “The Role of the National Guard in National Defense and Homeland Security,” *National Guard Association* (November 2005).

global war with terrorism. The Posse Comitatus Act is an artifact of a different conflict between freedom and slavery or between North and South, if you prefer. Today's conflict is also in a sense between freedom and slavery, but this time it is between civilization and terrorism. New problems often need new solutions, and a new set of rules is needed for this issue.”<sup>20</sup>

The military role in support of law enforcement encompasses the following potential missions:<sup>21</sup>

Enemy Attack	Insurrection
Civil Disturbance	Earthquake
Animal Disease	Mass Immigration
Hurricane	Volcanic Eruption
Landslide	Biological Incident
Explosion	Radiological Incident
Snowstorm	Drought
Oil Spill	Chemical Incident
Epidemic	Postal Work Stoppage
State Funerals	Counter Terrorism
Fire	Flood
Tsunami	Meteor Impact
Tornado	Space Debris Impact
Continuity of Government	Infrastructure Protection
Support for Civil Disturbances	Support for Law Enforcement
Support for Civil Authorities	Cyber Attack

Table 1. Domestic Military Responsibilities

Four civil support roles that require further analysis are:

### 1. Drug Interdiction

The expansion of the specific limits of the Posse Comitatus Act is apparent. With a little imagination, additional potential areas could be added to this list. The first focus of the research centers on the role of the military in drug interdiction. There is no controversy about this role because the Congress has explicitly provided authority. Over the past twenty years, the military has provided support in the areas of linguistics, communications, cannabis suppression, transportation, surface reconnaissance, aerial

<sup>20</sup> John Brinkerhoff, *The Posse Comitatus Act and Homeland Security*, Homeland Security.org, February 2002, 4.

<sup>21</sup> David Bolgiano, *Military Support of Law Enforcement Operations*, FBI Law Enforcement Bulletin, Washington D.C., December 2001, 19-22.

reconnaissance, education and leadership development. The FBI recommends that agency specific “memorandums of understanding” be used to create a common understanding about the military’s role. In peacetime, the Coast Guard has been given civil law enforcement powers in keeping with the “War on Drugs”.

## **2. Intelligence**

Much of the literature regarding military support focuses on intelligence sharing, primarily due to enactment and application of the PATRIOT Act . The FBI is the lead federal agency and the conduit for support from military sources. The events of 9/11 revealed the lack of cooperation between the CIA, FBI, NSA, and the various branches and intelligence agencies of the military service. The “War on Terror” requires these agencies to not only share and analyze information, but to also actively work with local law enforcement through the mechanisms of task forces and fusion centers.

The PATRIOT Act permits law enforcement to disclose the contents of communication or evidence with federal authorities. Federal agencies are also permitted to disclose certain information presented to a Grand Jury and other intelligence agencies. Other sections authorize avenues of communication. Granting “Secret” and “Top Secret” security clearances to local law enforcement agencies in large numbers creates two-way interaction and the possibility of effective intelligence sharing through the Joint Terrorism Task Forces and Fusion Centers. The primary control over intelligence gathering and sharing is judiciary. The PATRIOT Act requires court approval of wiretaps, pen registers requests and traps and trace orders. Congressional oversight and the use of sunset provisions create additional protections.

## **3. Search and Rescue Operations**

The third topic addressed by the literature is the role of military support in disaster rescue and recovery efforts. The Coast Guard was the first federal responder using its air power to conduct evacuations during the first critical days following the flooding of New Orleans. This has historically been the role of the National Guard at the direction of a governor of a state. Hurricane Katrina tested the status quo by facing the President with a situation in which Governor Blanco did not order in the Guard for fear of losing local control. Another test to established practice was that the magnitude of the event exceeded the capacity of the National Guard and required assistance from the active duty military.

The support to domestic operations was made more difficult by the need for The Navy and Air Force to assist the victims of the Tsunami in Indonesia and the diverting of military helicopters from their missions in Afghanistan and Iraq to assist earthquake victims in Pakistan. The rescue and recovery mission that has been historically applied domestically has now become a tool of foreign policy.

#### **4. Conducting Domestic Counter-Terrorism**

The fourth topical focus is the role of the military in combating domestic terrorism. One of the first examples was the use of military aircraft to attempt to intercept the commercial airliners containing the 9/11 suicide bombers. A second application was the dispatching of military aircraft over U.S. cities to prevent further attacks. An expansion of this focus is the application of military support in the event of a cyber attack, which has been acknowledged by some as an act of war because a major cyber attack could produce mass destruction. Our transportation, financial and public service sectors are vulnerable to a technological attack that could result in a loss of lives and tremendous financial resources. The impact of a successful attack, which cripples any of these critical sectors, would damage our economy and our ability to defend ourselves against further attacks. The military has little expertise in this area and local law enforcement would often be better equipped to respond, but such an attack can now be federalized. The military can contribute to local law enforcement, which may be better equipped to respond, but federal authorities can unilaterally assume the primary role in a federal response. For example, they have led the way in hardening cyber connectivity in order to keep classified channels and weapons systems secure.

The literature generally agrees on the accepted roles of military support and the exceptions to the Posse Comitatus Act. Although these exceptions emphasize separate elements of those exceptions, they are not mutually exclusive. They also hold in common that they do not address the coordination that is required to render military support to civil authorities. Many of the available literature resources are proprietary to a certain branch of the service or a specific threat.

## **F. CALIFORNIA MILITARY AND VETERANS CODE**

The governing authority for the California Military and Veterans Code, is explained and expanded on in the California Office of Emergency Services “Law Enforcement Mutual Aid Plan”.<sup>22</sup> That plan specifies the role of the California National Guard (CNG) as assisting authority to discharge lawful responsibilities by performing tasks which include, but are not limited to, restoration and maintenance of law and order, protection of life and property, limited removal of debris, medical evacuation and limited medical treatment, search and rescue, emergency communications, and general logistics support. Normally, CNG will be placed in support of law enforcement agencies and will not usurp or accept the responsibility or authority of civil authorities.

Military assistance once provided will be terminated at the earliest practical time at the restoration of law and order or the resumption of control of local law enforcement. In order for the Adjutant General, CNG, to properly evaluate the emergency and the need to implement certain procedures that will reduce the reaction time of CNG forces upon call-up, it is essential that early and frequent evaluations of the disturbance or condition and its potential be made by senior law enforcement officers and forwarded to him through the normal Governor's Office of Emergency Services communication channels, or directly to the liaison detachment of the Military Department when on the scene. Resource availability is dependent on federal deployments and other commitments.

The Governor, according to policy, may order the CNG to perform military duty of every description. The Governor will normally commit the CNG resources in support of civil authority, but only upon determination that emergency conditions exist or are imminent, that all civil resources reasonably available have been or will be committed, that civil authority cannot or will not be able to control the situation, and that military assistance is required and has been requested as provided in law.<sup>23</sup> CNG resources cannot be used in violation of the Economy Act, which requires civilian or commercial resources to be sought before considering use of the Guard. Under the provisions of Section 143 of the Military and Veterans Code, the Governor may commit CNG resources without a request from civil authority only under highly perilous conditions, where local civil

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<sup>22</sup> Law Enforcement Mutual Aid Plan (California Office of Emergency Services), 2006, 24-25.

<sup>23</sup> California Military and Veterans Code, Section 143.

authority no longer exists or is unable or unwilling to employ available civil resources to control or mitigate the situation.

CNG in support of local law enforcement will receive and execute broad mission-type orders of the civil officer in charge, but will at all times remain under the military chain of command. The Military and Veterans Code places solely on the military commander all decisions regarding tactical direction of troops, kind and extent of force to be used, and particular means to be employed to accomplish the objective or goal specified by the civil officer in charge.<sup>24</sup>

Any request for National Guard resources must be forwarded to the Governor through the Governor's Office of Emergency Services. Under the stress of emergency conditions, such as the 1992 Los Angeles Riots, local officials have disregarded the full utilization of the mutual aid system in requesting CNG assistance. This results in unnecessary delays in providing a response. Requests must be directed through the Law Enforcement Regional Coordinator to the Governor's Office of Emergency Services to ensure that all available manpower has been reasonably committed.

The Mutual Aid plan states that the CNG will make every effort to respond to the scene of an unusual occurrence in the most expeditious manner possible. Some responses may require the mobilization of additional personnel that are not on active duty at the time of the request. In such cases the CNG will respond initially with liaison personnel and upon gubernatorial approval, will expand deployment based on their represented assessment of the current situation and its worsening potential. Depending on global and statewide commitments at the time, additional CNG field resources can be expected to arrive on-scene no later than 24 hours after approval of the initial request. This is an important goal because the historic 72-hour response expectation is insufficient in light of current threats.

#### **G. THE PROBLEMS WITH MILITARY PURPOSE**

The literature also points out problems with the doctrine of military purpose. The first concern is that a crisis, such as a civil disturbance can be caused or exacerbated by military presence. The second concern is that the police are better trained and more

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<sup>24</sup> California Military and Veterans Code, Section 365.



appropriately equipped to handle some problems than the military. Having an adequate and appropriate police presence should always be the preferred option, with the military being a last resort. The third concern is that sometimes an inappropriate police response causes a riot requiring military intervention. Appropriate training and responses by local law enforcement should be emphasized to reduce the possibility of the need for a military response. The common thread was that the police should not use the military as the answer to a problem they created because of poor tactics, training or public relations. Another warning is that the military should not weaken its ability to conduct its primary mission by over committing resources to law enforcement support, especially in a time of war.

## **H. UNRESOLVED ISSUES**

The literature does not address all of the potential issues. It goes into depth regarding those areas that are clearly within the provisions of the law. It makes no attempt to explore the areas, which may become exceptions, authorized by Congress or Presidential action. It does not look at the possibility of allowing command staff to make their own decisions based on established protocol in the event of exigent circumstances. The research does not anticipate that civil authorities may have to come to the assistance of military facilities or personnel in the event of a terrorist attack. It does not deal with the evolving chain of command that will flow from civil to military authorities during different phases of any response to a domestic attack. Finally, the research does not address the lack of compatibility between the military's command structure under the Federal Response Plan and the National Incident Management System utilized by civil first responders.

## **I. RECENT EXAMPLES AND PRACTICE**

The primary result of research conducted on this topic has been to isolate the areas that have yet to be clearly defined by current law or national protocols. The interest in this topic arose from the interaction between federal and civil authorities following the crash of Alaska Airlines flight 261 off the California coast, which killed 88 people in 1998. The Ventura County Sheriff's Department initiated the search and rescue operations because it had aircraft and rescue personnel in the area. The recovery and investigation phase progressed to a joint operation with the Coast Guard and Navy. The

base of operations moved to a Navy base because it afforded privacy and resources. Later, the National Transportation Safety Board and FBI took full responsibility for the investigation. Operations went smoothly when the rescue and recovery efforts were either clearly local or federal. During the transitions between law enforcement and federal agencies, it was only positive personal relationships that guided the participants through the unclear chain of command issues.

The second incident that focused on the same issue was a training exercise conducted through the coordination of the Center for Asymmetric Warfare. The exercise involved local and federal law enforcement working with the Navy in coping with a simulated attack on a Navy base using a cargo ship containing a dirty bomb. The specialized units performed as expected and the tactical operations were conducted with precision. The confusion was limited to the command post. Different management systems, communications, definitions and understanding of chain of command kept the command staff adjusting and moving awkwardly through the exercise. Although technology, terminology and equipment were problematic, the basis for the difficulties was the lack of understanding of each other's chains of command and systems for emergency response.

An interview with the law enforcement commander of the exercise provided an example of the issues that surfaced during this research. The law enforcement decision makers were all trained in the application of the State Emergency Management System, which closely approximates the National Incident Management System. It was part of their culture and a common link between all responding state and local agencies. The terminology was consistent and participants had been trained in their roles within the system, which was reinforced by practical experience. However, the military participants operated under a different system and the law enforcement representatives were never briefed on its operation. Law enforcement also did not have direct communication with military tactical units. Although there was a nominal unified command, law enforcement leaders were not routinely briefed regarding the status of military operations. When a decision needed to be made quickly, they did not understand the military's process for

receiving their authorization for action. They were also frustrated by the delay in receiving authorization for military assistance when immediate action was required.

The expectation was that the research associated with this project might shed light on best practices to improve coordination between law enforcement and the military during a terrorist response or catastrophic natural disaster. While model practices were not discovered, the research certainly indicates that there is an unmet need in California and in other parts of the country, for an integrated approach to maximizing the use of local and military resources. In the next chapter, the focus will be National Guard, federal, or active duty military deployments that provide lessons learned related to National Guard support of local law enforcement.

## **J. SUMMARY OF RESEARCH**

The literature reveals that authority for the military to conduct domestic missions was restricted by the Posse Comitatus Act to prevent the military from becoming a political tool that could endanger the civil liberties and our constitutional democracy. The Act provided that Congress could amend Constitutional limitations in order to provide flexibility for unforeseen threats. Since that time, the Insurrection Act, Stafford Act, and Warner Defense Appropriations Act have allowed the use of the military to keep the peace, combat drugs, deal with terrorist threats or attacks, conduct search and rescue operations, provide intelligence and respond to natural disasters. These changes have caused rapid adaptation for both law enforcement and the National Guard. These expanding military responsibilities have created uncertainties about the relationship between the National Guard and local law enforcement. The National Incident Management System was adopted to define the role of the military and other federal agencies in the event of terrorist attacks or natural disasters, but NIMS does not deal with operational issues such as communications, logistics, Unified Command, or the difference between military and law enforcement command and control.

After action reports were also analyzed to determine what practical issues arise when the National Guard is involved in a major response to support law enforcement. The scope of this thesis is California and the most contemporary example of a major National Guard response to law enforcement was the 1992 Los Angeles Riot. The military response was delayed by planning and logistic failures. The numerical response

was far more than needed, because law enforcement did not understand National Guard capabilities. Law enforcement was unsure of how to use National Guard assets effectively. Communications was ineffective and coordination was lacking. These and other problems were also experienced in the National Guard response to the flooding in New Orleans. Other exercises and federal responses confirm that these problems are likely to occur in any large military response to aid civilian authorities.

The third lesson learned from the research is that it is possible to create an environment in which the National Guard and law enforcement plan and problem solve cooperatively on a regular basis. An example is the Illinois Terrorism Task Force that pre-dates the terrorist attacks of 9/11. The Illinois National Guard is co-located with state law enforcement personnel and participates with the Task Force in planning efforts monthly with the entire state law enforcement community. When a large law enforcement and National Guard deployment was ordered to assist civil authorities in Louisiana, the prior planning and interaction that existed because of their prior experience resulted in a rapid and efficient response. California does not have a state Task Force or a forum for law enforcement interaction with the National Guard.

Finally a review of the California Law Enforcement Mutual Plan demonstrates that the authority of the Governor, the National Guard and civil authorities are clearly defined, but other critical operational issues are not discussed. It is encouraging to see that the National Guard is committed to providing a representative to evaluate the need for their assets quickly and follow up with a deployment within 24 hours. Practically speaking, logistics prevent support from any sources other than regional law enforcement agencies in less than 24 hours. After a couple of shifts, law enforcement mutual aid can begin to be depleted and that is when National Guard assistance is most needed.

An example of a potential problem in the plan is that the military commander is solely responsible for deciding what means or degree of force the National Guard will use to accomplish the mission delegated by law enforcement authorities. The authority is certainly understandable if the military is defending their personnel or protecting the lives of others. The concern becomes whether law enforcement or political authorities would be hesitant to delegate some missions, particularly if they had no understanding of the

means of force that would be used. Historically, National Guard units have functioned under the operations section's military branch within the Incident Command structure, and have not had direct organizational ties to law enforcement decision makers. An example of this occurred when the Governor of Louisiana approved the unqualified use of force to control looting in New Orleans following Hurricane Katrina. Local elected officials and law enforcement agencies would have had serious concerns if they felt the National Guard was going to take lives to protect property. This illustrates the importance of planning and prior agreements between law enforcement and the National Guard to agree on rules of engagement and other operational issues that might arise in a major response to a dynamic threat.

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### **III. LESSONS LEARNED APPLICABLE TO NATIONAL GUARD SUPPORT TO LAW ENFORCEMENT**

The most contemporary example of a major deployment of the California National Guard to assist law enforcement during a major emergency is the response to the Los Angeles Riots in 1992. The CNG also had a smaller deployment in the aftermath of the Northridge earthquake in 1994, but the scale and nature of that mission does not compare with the complexity of the 1992 LA Riots. Comparing present day operations to the Los Angeles Riots has limitations as the deployment occurred almost 15 years ago. The riots did not take place in a post 9/11 world, nor did they come in a period during which the National Guard was heavily committed overseas. Although the CNG has been deployed to provide security at airports and to reinforce the border, these deployments were in support of federal agencies and not local law enforcement. In light of the lack of contemporary experience with a major CNG deployment in support of local law enforcement, other comparisons can at least shed light on experience with support for the National Guard in other states and the active duty military, such as the assistance provided in the aftermath of Hurricane Katrina. The serious examination of the military and law enforcement performance provides insight that applies to an examination of law enforcement and military responders in California.

Another perspective can be provided by examining exercises in California that include interaction between military and law enforcement assets to address a terrorist threat or attack. The Center for Asymmetric Warfare exercise provides a valuable illustration of the strengths and weaknesses of a joint law enforcement/National Guard response. Finally, an examination of the emergency models of other jurisdictions can be enlightening from the aspect of comparing working structures and their successes and failures. The State of Illinois Joint Terrorism Task Force was selected because it was formed in the aftermath of the Oklahoma City bombing. This organization pre-dates most other states and creates an active interaction between law enforcement and the Illinois National Guard. This structure demonstrated a notable success in providing a coordinated response to Mississippi following Hurricane Katrina.

## A. 1992 LOS ANGELES RIOT

The California National Guard has had more recent limited or federal deployments, but none have the same characteristics as the Los Angeles Riots of 1992. In the past five years, the National Guard has been called to provide additional security to airports on two occasions in support of the Transportation Safety Administration. The Guard has also been deployed to the Mexican border to supplement the efforts of Immigration and Customs Enforcement.

While these were major deployments, neither was in support of local law enforcement authorities. There have also been many small deployments of select units that did not reach a high enough magnitude to provide valuable lessons for a future major event. The Los Angeles Riot in contrast was an incident involving law enforcement mutual aid, the National Guard, and later a federal joint task force. It serves as the only applicable test of the type of interaction that could be expected in the event of a major terrorist attack or catastrophic natural disaster in California, such as an earthquake, wild land fire, or tsunami.

Chief Charles Simpson of the Office of Emergency services confirmed that the 1992 Los Angeles Riots remains the only large-scale deployment of the California National Guard to local authorities in decades and, other than exercises, is still the most appropriate case study in his view. The event was fully analyzed after action-reports completed by the California National Guard and Highway Patrol. Chief Simpson also referenced an operational checklist for Civil Unrest/Disorder that was produced following the riots with the consultation of the sheriffs who were Mutual Aid Coordinators. This document contains the specificity and checklists that would be helpful for all potential hazards and threats, but are not in common distribution or part of required training.<sup>25</sup>

Christopher Schnaubelt, in his “Parameters” article titled *Lessons in Command and Control from the Los Angeles Riots*, pointed out many problems that the armed services have with assisting local authorities in operations other than war (OOTW). While progress has certainly been made since the inception of USNORTHCOM, it is also apparent that many of the same practical difficulties would be encountered today in the

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<sup>25</sup> Charles Simpson (Chief Office of Emergency Services, Sacramento, CA), interview by author.



event of an immediate and large-scale military deployment to a major terrorist attack or natural catastrophe. The author considers the 1992 Los Angeles Riot an illustration of how a military mission can be vague and uncertain because of the nature of the event and the impact of political considerations. The uncertainty of command when dealing with multiple jurisdictions and politicians at various levels competes with the military tenet of Unity of Command.

The Los Angeles riot was the most destructive civil disturbance in American history. Fifty-four people lost their lives and property damage exceeded \$800,000,000. At the height of the deployment 10,000 California National Guard troops and 3,500 active duty soldiers and Marines participated.<sup>26</sup> The size and duration of the military support effort makes this event one of the best tests of law enforcement/military joint command and control. The fact that there was a hostile force in a large urban environment again presents a more realistic comparison to a terrorist event than a natural disaster.

Some of the lessons learned from the response to the Los Angeles Riots and Hurricane Katrina were reflected in the clarification of the military's role in the 1993 publications "Department of Defense FM 100-5 *Operations*" and "Domestic Support Operations." Some of the problems identified are also consistent with deficiencies experienced in actual deployments and training exercises in the post 9/11 environment.

The first failures noted were the initial response to the riot by the LAPD. All of their senior leadership was out of the county at a training meeting, even though hostilities could have been anticipated when the court verdicts regarding the Rodney King beating were announced. The Chief of the LAPD, Daryl Gates was at a political fund-raiser when violence broke out and also was not on speaking terms with Mayor William Bradley. This relationship contributed to the ineffective response to the initial violence, which was captured on national television as a motorist was dragged from his vehicle and beaten severely for several minutes with no police response.

The experiences of the 1992 L.A. Riots could be repeated in any major terrorist event. Local law enforcement can be quickly overwhelmed. Politicians can be expected

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<sup>26</sup> Susan Rosegrant, *The Flawed Emergency Response to the 1992 Los Angeles Riots* (John F. Kennedy School of Government, Harvard University, Cambridge, Mass., 2000), 1

to generate unwarranted requests in order to display leadership. Competing requests will be made for military resources. The mission will be unclear and changing. The following is a summary of issues identified that could very well have present day application:

1. The National Guard leadership did not have a reliable deployment timetable to help local law enforcement plan with their tactical planning.
2. The Los Angeles Police Department failed to use the law enforcement mutual aid agreements that they had in place.
3. Law enforcement did not know where to deploy the troops or in some cases what mission to assign them.
4. Civilian and military leaders assumed that the National Guard or the standing military would never be required to restore order in an American city. As a result, civilian and military emergency plans did not include that contingency.
5. The National Guard's civil disturbance plan and training only considered the use of their modest Military Police Brigade. The infantry battalions would provide additional support if needed, but they received no training and were not included in the operational plans.
6. The police mutual aid doctrine created the expectation that by the time all available law enforcement resources were exhausted enough time would have passed for the situation to have de-escalated to the point that the military would not be necessary. This assumption did not consider the political reality of elected officials from Los Angeles, Sacramento and Washington D.C. responding to live television coverage with overlapping, and uncoordinated, requests.
7. The LAPD's size and culture of independence made it difficult for them to admit they needed help from outside police agencies, much less the military. Chief Gates was quoted as saying he did not want to, "Take orders from a general."<sup>27</sup>
8. The "Stomp and Drag"<sup>28</sup> tactics that the National Guard and active military were trained in were inappropriate for the threat and never used.
9. Communications regarding the timing of the deployment were unclear and resulted in a sizeable gap between when law enforcement expected military support and when it arrived.
10. The failure to plan for the command and logistics required for a sizeable military response to a civil disturbance created prolonged and avoidable delays.

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<sup>27</sup> James Delk, *Fires and Furies: The L.A. Riots* (EIC Publications, Palm Springs, CA, 1995), 45.

<sup>28</sup> Ibid.

11. Few troops had received civil disturbance training in the last year and most did not have riot batons or shields. Their weapons were not locked to prevent full automatic fire.
12. There was no plan for the deployment of centralized munitions and soldiers were deployed without ammunition in dangerous areas.
13. Military and law enforcement forces had not trained together for this contingency.
14. The Emergency Operations Center, manned by the L.A. Sheriff's Department was designated as the location where requests for support would be made and approved. The LAPD chose to ignore this single source plan and made independent requests directly to the military. This made prioritization impossible for both law enforcement and the National Guard.
15. The number of troops requested through the Emergency Operations Center and the LAPD differed greatly and led to confusion as to the actual need for deployment.
16. The California Highway Patrol, which should have been deployed before the military, was not engaged until after the military response.
17. When field commanders began coupling a law enforcement commander with a National Guard commander at the division level, coordination greatly improved.
18. By the time the Joint Task Force was organized the riots were essentially over.
19. The President federalized the National Guard but they were not directly notified of the change in command until the next morning.
20. Before federalization and the establishment of the Joint Task Force nearly 100% of requests for support were granted. After the JTF was given authority to grant requests, the approval ratio was reduced to 20%. Much of the difference was related to the greater utility of the National Guard when it was under state control. The time for approval also increased to 6-8 hours.
21. The Joint Task Force disengaged without notice or transition leaving law enforcement completely unprepared to assume command.

Governor Pete Wilson also commissioned a report on the National Guard response. The report included the input of all major stakeholders including the Office of Emergency Services, California National Guard, Los Angeles Sheriff's Department and Los Angeles Police Department. The report concluded that the National Guard was not properly equipped or trained for the mission and law enforcement needed to learn how to

pre-determine missions before requesting assistance. The report's observations conclude with the statement, "The military maxim that 'we fight as we have trained' applies to crisis management of emergencies."<sup>29</sup> While the CNG conducted a follow-up training exercise titled Angel Gate 93 to improve their response interaction with law enforcement, the effort only emphasized a joint effort with LAPD and LASO. The CNG additional planning resulted in an improved performance during the 1994 Northridge earthquake response.

During the last fifteen years, the lessons learned from the LA Riots have lost much of their value. The Governor's Commission recommendations still provide a solid roadmap to preparing for future joint civilian/military operations in California. In summary, the initial evaluation and subsequent training needs to be frequently repeated. The problems that contributed to a lack of coordination between law enforcement and the California National Guard need to be corrected. Common guidelines need to be established and statewide training must be conducted. One of goals of this project is to move both law enforcement and the CNG toward a process that will provide written guidelines and training that will ensure effective performance in future joint responses.

## **B. HURRICANE KATRINA**

Hurricane Katrina is the "costliest natural disaster ever to strike the United States. Risk management experts estimate that the storm resulted in \$40-\$60 billion in insured losses, while actual losses likely will exceed \$150 billion. In terms of human costs, the effects of Katrina will be felt for decades."<sup>30</sup> This is not a California scenario, but it does provide a modern example of local, state, National Guard and federal joint operations in a stressful environment. Local law enforcement was completely overwhelmed and in many cases unable to respond or restore order. Looting and violence prevailed and lack of planning and coordination hampered the efforts of mutual aid responders to render assistance. In addition, a dysfunctional political atmosphere and lack of local and state leadership contributed to the slow and ineffective emergency response.

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<sup>29</sup> William Harrison, "Assessment of the Performance of the CALIFORNIA NATIONAL GUARD During the Civil Disturbances in Los Angeles, May 1992," *California National Guard* (October 2, 1992), 31.

<sup>30</sup> Smith and Rojek, *Law Enforcement Lessons Learned from Hurricane Katrina* (University of South Carolina Publications, May 2006), 1.

A summary of the many after action reports on the response to Hurricane Katrina reveals that there were a multitude of identified problems and lessons observed in various response and recovery components. The following items have a direct bearing on elements of a joint response that are applicable to efforts to coordinate the California National Guard's ability to respond to local authorities, and are relevant to the scope of this project.

**1. Command and Control were Impaired at All Levels, Delaying Relief**

Communications needed to be more seamless, both within law enforcement and with the National Guard and other responding agencies. An associated problem was that inadequate personnel, training, and funding were available to carry out the work of command and control. In some areas of Louisiana there was "no pre-existing unified system of command and control at all."<sup>31</sup> In areas of Mississippi command and control was ceded to the Florida Department of Law Enforcement for several weeks.

**2. Coordination between Law Enforcement and the Military was Lacking**

The National Response Plan's Catastrophic Incident Annex, as written, contributes to delay in the active duty military response. The Department of Defense (DOD) and FEMA also need to coordinate more effectively. DOD needs to incorporate lessons learned during joint exercises with civil authorities. All of these factors contributed to the coordination problems between the military and law enforcement.

National Guard and active duty forces need to integrate more effectively to provide a more cohesive military response. USNORTHCOM needs more adequate insight into state response capabilities. Even successful Search and Rescue efforts can benefit from coordination and integration between various military organizations and law enforcement resources. Both of these were areas of failure during Katrina.

Legislators and the academic community critiqued the police response to Hurricane Katrina during congressional hearings.<sup>32</sup> The magnitude of the event could provide valuable lessons that should be considered by jurisdictions planning for a major

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<sup>31</sup> Smith and Rojek, *Law Enforcement Lessons Learned from Hurricane Katrina*, 3.

<sup>32</sup> *Hurricane Katrina: The Role of the Governors in Managing a Catastrophe: Hearing Before the Senate Committee on Homeland Security and Government Affairs*, 109<sup>th</sup> Congress, 2006 (testimony of Warren J. Riley, Superintendent of the New Orleans Police Department).

terrorist attack. In the case of New Orleans, over 300 officers had to be rescued before other search and rescue efforts could be attempted; sixty officers resigned; forty-five were fired; thirteen were investigated for looting; and, 70% were homeless. Furthermore, police communications failed for the first 80 hours; many of their vehicles were flooded; plans were not well understood or available, and they had never planned or trained for some of the contingencies. They suffered from lack of planning, corruption and inefficient leadership. Their failures were highlighted by the fact that they were confronted with a foreseeable event.

Although the size and scope of the event invites the question of whether even the best trained and equipped department could have performed better, the same report provides the answer. Neighboring Plaquemines Parish relied on their plans to save their entire patrol fleet by moving it to higher ground. They also evacuated all of their administrative records and prisoners in advance of the storm. The sheriff's effective plan allowed them to immediately devote their full efforts to search and rescue functions.<sup>33</sup>

Professor Herman Leonard and Dr. Arnold Howitt of the Harvard Business School offered additional observations and recommendations in their report titled "Katrina as Prelude."<sup>34</sup> The first sobering reality posed by the authors is that the United States is not, and has never been, capable of responding to an event of this magnitude. The second point is that FEMA was never designed, resourced or authorized to lead a response effort of this size and scope, despite what the public and some elected officials believe.

A report by the University of South Carolina summarized all of the available data and synthesized them into eight highlighted recommendations for law enforcement. The following recommendations send a clear message to California and other states lacking a pre-planned understanding of command and control in major multi-jurisdictional

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<sup>33</sup> Daniel Farber, "This Isn't Representative of Our Department: Lessons from Hurricane Katrina for Police Disaster Response Planning" (*Disasters and the Law*, Willoughby Anderson, April 28, 2006), 1-2.

<sup>34</sup> Herman Leonard, "Katrina as Prelude: Preparing for and Responding to Future Katrina-Class Disturbances in the United States" (John F. Kennedy School of Government, Harvard University, March 8, 2006), 10-12.

responses, especially when they entail military resources. The following recommendations are listed because they reflect the problem areas most clearly identified in the University report:

1. The first priority should be to prevent and mitigate damage before the event occurs.
2. The Incident Management System needs to progress beyond a plan to a paradigm for action.
3. First responders should be qualified through a system of training and experience.
4. The level of advance planning and practice for a coordinated response should be dramatically improved.
5. Agreements for political communication and decision-making are needed.
6. The capacity to communicate and “lean-forward” should be sharpened.
7. Local government needs advance planning with private organizations.
8. DHS needs to become an excellent organization with expanded capabilities and resources.

These findings were summarized by the researchers with the following statement that emphasizes the type of pre-planning that could have prevented many of the problems experienced during the Los Angeles Riots of 1992:

Major disasters require pre-planned lines of command and control to coordinate the response of multiple public safety agencies, including those from out of state.<sup>35</sup>

The results of these reports have several applications to this thesis, despite the fact that the National Guard of the State of Louisiana, and later active military units, were the primary federal resources interacting with the New Orleans Police Department and the Louisiana State Police. Command and control was impaired by a lack of coordination, as it was during the Los Angeles Riot. Coordination with the military was lacking, as it was in the 1992 response to assist the LAPD. There was a lack of understanding of military capabilities that still exists between law enforcement and the California National Guard. Finally, the process for requesting active duty military resources is lengthy and not

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<sup>35</sup> Smith and Rojek, *Law Enforcement Lessons Learned from Hurricane Katrina*, 8.

clearly understood by civil authorities. The flaws that were revealed during the response to Hurricane Katrina can certainly occur in California if planning, communications and training are not improved.

### **C. 9/11 TERRORIST ATTACKS**

The terrorist attacks on the World Trade Center and Pentagon have been the subject of reports, books, movies, and after action reports by every involved branch of government. The enormous first responder capabilities in New York do not make it the best predictor of military or federal support of law enforcement in other jurisdictions, but there are still valuable lessons to learn.

Although a review of each report on the topic is useful, FEMA produced a crosscutting analysis of the nine major post-9/11 reports to group key recommendations that were common to a majority of reports.<sup>36</sup> The following recommendations have relevance to the subject of law enforcement /military cooperation. Recommendations not applicable to the topic of this thesis are not included.

#### **1. Command and Control**

Full utilization of an Incident Command System should be used to coordinate a major multiple agency response. Federal agencies should also integrate their command systems into the state and local ICS.

#### **2. Communications**

Interoperable communications are important for local, state and federal agencies, as well as standardized protocols, standards, and procedures.

#### **3. Coordination**

Five of the nine reports reviewed by FEMA called for improved coordination across all levels of government, including an interagency plan and improved communication flow from local and state to federal agencies. The plan should include resource management, equipment caches, and be the subject of training and exercises.

#### **4. Mutual Aid**

Mutual aid agreements are needed across all levels of first responders, including joint training and exercises for local, state, and federal agencies that focus on

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<sup>36</sup> *“Summary of Post 9/11 Reports “Lessons Learned”* (Federal Emergency Management Agency, Washington D.C., October 2002)



preparedness, response operations and interoperable equipment. This recommendation directly reinforces the need for pre-planning for military support in California.

**D. ASYMMETRIC WARFARE INITIATIVE EXERCISE 2003 (AWI-03)**

Terrorist events and natural disasters start as local events that often result in a request for military assistance. Such an event could involve overlapping jurisdictional authority or even evolve from local, to federal and then transition back to local authority. The AWI-03 exercise in Ventura County provides lessons observed that directly apply to the interaction of law enforcement and the California National Guard. The AWI-03 exercise that was conducted at the Port Hueneme Naval Base and the adjoining civilian port included a threat of a dirty bomb set off by insurgent stowaways. The impact of the explosion in the scenario affected both civilian communities and connected military bases.

Paul Grossgold served as the Captain of the Naval Construction Battalion Base at Port Hueneme at the time of the AWI-03 training exercise in 2003. He said his staff had discussed the possibility of responding to local events at the request of USNORTHCOM. His responsibilities in that scenario were clear unless the response was required before formal tasking had occurred. Captain Grossgold stated, “It was my guidance (to his staff) that if the need was clearly there, I would not wait to respond. I’d rather be reprimanded for acting too soon than keep potentially life-saving assets standing idle.”<sup>37</sup>

The Captain observed that law enforcement had an important responsibility to define the military’s civil mission, establish a clear civilian chain of command, and have a plan to escalate the response as needed. As a result of the exercise, the Captain also recognized he needed a larger commitment to the joint EOC than his initial representative and redeployed personnel from the base EOC. He felt communications after that adjustment were adequate.

Ed Beakley, an exercise designer for the Battelle group, was also interviewed because of his involvement with training that encompassed the response of both local authorities and the military. Mr. Beakley felt that the exercise demonstrated that the greatest need for improvement was in the understanding by all parties of the resources,

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<sup>37</sup> Paul Grossgold (U.S. Navy, Captain), interview by author, Ventura, CA, October 27, 2006.

limitations and expectations of the agencies they would be working with in a mutual aid disaster.<sup>38</sup> Mr. Beakley also observed that the understanding of roles within an Incident Command environment was a serious problem, because of the military's background in "Unity of Command" compared to the "Unified Command" commonly used in large responses by civilian authorities. Based on his observation and experience, he felt that the first priority of integration between civil authorities and the military should be the National Guard, since they are the first military responders to most domestic threats. He emphasized that collaboration; communication and active participation in a unified command would take pre-planning, training and exercises to become operationally beneficial.

#### **E. LESSONS LEARNED FROM ILLINOIS TERRORISM TASK FORCE**

California's short-lived State Committee on Terrorism can be compared with the Illinois Terrorism Task Force, which was created in 1998 as a response to the terrorist bombing of a federal building in Oklahoma City. This Task Force reports directly to the Governor's Deputy Chief of Staff for Public Safety. It recommends to the Governor a strategy for terrorism preparedness. The Task Force members vote on budget priorities for DHS grant funds and make statutory, operational and training recommendations to the Governor. The Task Force also acts as the purchasing agent for grant-funded equipment, insuring standardization throughout Illinois. Given the difficulty in coordinating the 1,800 law enforcement agencies in the state, the Task Force has made significant gains by bringing together over 800 of the larger agencies representing the large majority of state officers.<sup>39</sup>

The Task Force is comprised of the following fifteen working committees representing all sectors of government and the private sector that are stakeholders in planning or preparing for terrorist attacks. These committees have broad representation and propose budget priorities, training, and statutory changes relevant to their specialty. The active I.T.T.F. committees are:

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<sup>38</sup> James E. Beakley (Battelle Group), interview by author, Camarillo, CA. June 28, 2006.

<sup>39</sup> Sheriff Dave Owens (Illinois Law Enforcement Alarm System), interview by author, Springfield, Illinois, October 25, 2006.

Bioterrorism Communications Crisis Response and Prevention Elected Officials Emergency Management Fire Service Mutual Aid Information Technology Law Enforcement Mutual Aid	Private Sector Public Information Science and Technology Training Transportation Urban Area Initiative Volunteers / Citizen's Corp
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Table 2. Illinois Terrorism Task Force Committees

The active nature of this Task Force, in addition to the large degree of participation and inclusion created by their active committee process, has served to improve communication between the state and local agencies and created a sense of teamwork. The State of Illinois' response to an EMAC request to respond to Louisiana in the aftermath of Hurricane Katrina illustrates their success.<sup>40</sup> Illinois was able to dispatch over 900 firefighters, 200 pieces of fire apparatus, 300 police officers, management and support personnel from over 300 police and fire departments under a single command, and operating as one department with compatible communications. These forces were joined by 1,000 National Guard troops. In addition to disaster response, the Task Force has also created eight Special Response Units capable of assisting with a variety of threats from SWAT operations to WMD responses, within their state and beyond.<sup>41</sup>

It is surprising that Illinois does not have a sub-committee on civil/military cooperation, but the active involvement of the National Guard on other committees does create a forum for frequent interaction and planning. The Law Enforcement Mutual Aid committee would be an appropriate forum for conducting pre-planning for military support of law enforcement. While this organization has not produced specific responses, it is a model of a structure that facilitates interaction and personal relationships and problem-solving between law enforcement and military responders, which creates a strong foundation on which to rely on, in the event of an actual joint response.

In conclusion, we can learn valuable lessons about how to prepare for a major deployment of the California National Guard from a review of the 1992 Los Angeles

<sup>40</sup> Chief Mark Beckwith (Illinois Law Enforcement Alarm System), interview by author, Springfield, Illinois, October 25, 2006.

<sup>41</sup> Illinois Terrorism Task Force (Illinois Office of Homeland Security, Springfield, Illinois, March 1, 2006), 1-8.

Riot. It was not in a wartime environment, but the magnitude of the event certainly provides parallels to a potential terrorist event. The event quickly exceeded law enforcement capabilities. It disrupted transportation and vital elements of the infrastructure. The riot included a large response area with a dangerous adversary. It created a joint operation between organizations that had little previous history. None of the involved agencies had plans for this type of event and had not trained together. Political interference became a major and unanticipated complication. The differences in culture, communications, expectations, operational protocols and terminology between law enforcement and the National Guard caused significant delays in response that contributed to casualties and property loss.

The National Guard response in the aftermath of Hurricane Katrina demonstrated that command and control differences and communications problems are problematic when law enforcement receives military support. A lack of effective integration hampered coordination of law enforcement and military resources. Although the National Guard did not play a major role, the response of federal agencies to the 9/11 attack on the World Trade Center again pointed to problems in command and control, communications and coordination, which could have been remedied by prior mutual aid agreements.

The lessons learned from the after-action reports related to these major joint responses could have been largely addressed by prior agreements, plans, guidelines, training and exercises. In attempting to find a best practice, the Illinois Terrorism Task Force was reviewed because of their success in marshaling major law enforcement, National Guard response to Hurricane Katrina. While they do not have specific guidelines for National Guard support, they do create a structure that promotes interaction and joint problem solving involving law enforcement and National Guard representatives. The history, trust, and collaborative experience built in this environment allowed them to react quickly and cooperatively during a crisis.

The next chapter will evaluate the environment in which change needs to occur. It will also apply the “Strategy Canvas” and “Four Actions Framework” models to the available information. Finally, a summary of the acceptance potential of the critical stakeholders will be presented in preparation for identifying specific options for change.

#### **IV. POLICY OPTION ANALYSIS FOR IMPROVING NATIONAL GUARD SUPPORT TO CALIFORNIA LAW ENFORCEMENT**

In order to create a strategic plan to address the lack of common planning, protocols and training between California law enforcement and the National Guard, elements and techniques of the *Blue Ocean Strategy* as described by authors W. Chan Kim and Renee Maubourge will be applied.<sup>42</sup> In this groundbreaking book, the authors point out that the hurdles to executing change in an organization are: cognitive, resources, motivation and politics.<sup>43</sup> This thesis utilizes the strategy because it has been an effective change agent in public and private organizations in need of change in emerging threat and opportunity environments. The War on Terror certainly creates uncharted territory for civil authorities anticipating a reliance on National Guard support. As a result of these features, the *Blue Ocean Strategy* has been used as one of the primary strategic planning methodologies by the Center for Homeland Defense and Security, located at the Naval Postgraduate School.

The first element of this approach is to create uncontested market space. In the terminology of the authors this refers to providing a distinctive solution to a problem that has not been addressed by other sectors of the industry. From a Homeland Security perspective, statewide guidelines and adequate pre-planning for a major CNG response to assist law enforcement are such uncontested needs. The author's research failed to identify a California county or another state that has a comprehensive operational plan for integrating National Guard and law enforcement resources. The second element of the strategy is to make the competition irrelevant. In this case, there is no competition except those forces that would use violence within our borders. Producing a more effective response requires more collaboration than competition. The third element is capturing a new demand. In the aftermath of the unsatisfactory joint response to Hurricane Katrina, emergency responders, government agencies, and the public have a strong interest in being better prepared for the next event. Recommendations derived from this study will

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<sup>42</sup> W. Chan Kim and Renee Mauborgne, *Blue Ocean Strategy*, Harvard Business School Press, Boston Massachusetts, 2005, 23-184.

<sup>43</sup> Ibid., 147-148.

have an excellent opportunity to benefit from this demand. The final element is breaking the cost-value trade off. The proposals produced by this project result in value that far outstrip the modest cost of implementation.

## **A. STRATEGY CANVAS**

A Strategy Canvas is simply a analysis of the competitive environment in which the proposed change will occur. The first stage of this analytical tool is an appraisal of how similar components from the same industry perform. It is difficult to graph the performance of the fifty states in regard to integrating law enforcement and National Guard resources because no state surveyed responded that they have a specific plan to apply the National Incident Management System to the practical realities of a multi-jurisdictional response, including their National Guard. When considering just California counties or mutual aid regions, surveys again did not reveal any specific regional agreements between law enforcement and the National Guard. While these results are not helpful in terms of graphing differences, they do demonstrate that exploration of this topic occurs in an uncontested environment.

A new value will need to be identified to support change. In this case that value is the creation of a coordinated emergency response structure that utilizes protocols, guidelines, training, exercises, and agreements to anticipate the requirements of all-hazards mutual aid involving local, state, military authorities and the public. This is a “Blue Ocean” environment because no other state has been found to have a written document expressing operational agreements between the National Guard, the Offices of Homeland Security and Emergency services, and the principle local emergency response stakeholders.

### **1. Goal**

To create a body of statewide protocols, training requirements, and personal interaction that will standardize the command and control interactions between National Guard personnel while responding to assist civil authorities during catastrophic natural disasters or terrorist attacks in California.

### **2. Importance**

The example of disorganized responses to Hurricane Katrina and the Los Angeles Riots of 1992 make it evident that the various levels of government still do not have clear

operational direction, beyond the jurisdictional guidelines of NIMS, to guide their interaction. There have been enough problems created by a lack of standardized protocols, training, and communications to make it imperative that California creates a universally accepted set of standards for law enforcement and National Guard responses. The proposed standardization of expectations, protocols and training would logically reduce casualties and property loss in the event of a major terrorist attack or natural disaster.

### **3. Environmental Scan**

Discussions with 58 California sheriffs and mutual aid coordinators reveal a lack of communication and understanding between law enforcement and their state and federal partners. A review of lessons learned from Hurricane Katrina, the Los Angeles Riots of 1992 and the AWI-03 training exercise confirms that command control, communications and role definition are problems that impair joint agency emergency responses due to delays in bringing together resources which address threats to lives and property. Conversations with federal and state military authorities confirm that the same uncertainty exists regarding the law enforcement role and expectations.

### **4. New Programs**

The first recommendation will be to create a stakeholder committee to oversee regularly scheduled meetings to produce a written set of objectives including the creation of a standardized approach to multi-jurisdictional emergency responses. The second recommendation will be that the Governor commission a panel of subject matter experts from each of the primary emergency response stakeholders to design a set of protocols and checklists to cover each of the threat scenarios addressed in the National Response Plan. The third program priority will be regularly scheduled command and control exercises in each mutual aid region to test the quality of civil/military interaction in applying the protocols. The fourth program enhancement will be the production of capability inventories for local, state and federal authorities.

### **5. So What?**

It is not an exaggeration to state that efficient interaction between responders at all levels is a matter of life and death. It is the prime standard by which citizens evaluate their government, because there is no greater mission than the protection of human life

and property. Hurricane Katrina demonstrated that our ability to respond across state and federal boundaries in keeping with the public's expectation is lacking. Americans certainly have a right to expect that we will learn from the mistakes of the past and be ready for the challenges of the future. A standardized approach to National Guard assistance to law enforcement will reduce unnecessary delays in joint responses in addition to contribution to full utilization of resources.

The following figure reflects a subjective projection of the impact of the proposed changes based on research and interviews. Principle stakeholders were asked to provide an appraisal of the current status of preparation and then estimate the change that would occur if the proposed process of adopting guidelines, supported by training and exercises was implemented. The following graph reflects their responses.

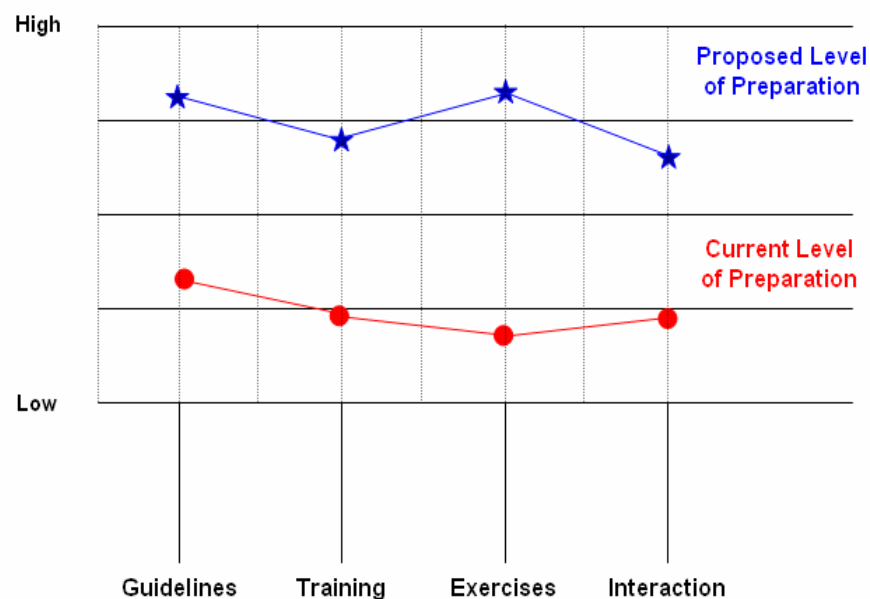


Figure 1. Strategy Canvas: National Guard Support to Law Enforcement.

## B. FOUR ACTIONS FRAMEWORK

Using the “Four Actions Framework”<sup>44</sup> introduced in the *Blue Ocean Strategy*, the strategic priorities can be described in a structured format focusing on elements to be eliminated, reduced, created, or raised to achieve the goal. This systematic approach requires reducing change to basic and identifiable elements.

<sup>44</sup> Kim and Mauborgne, *Blue Ocean Strategy*, 30.



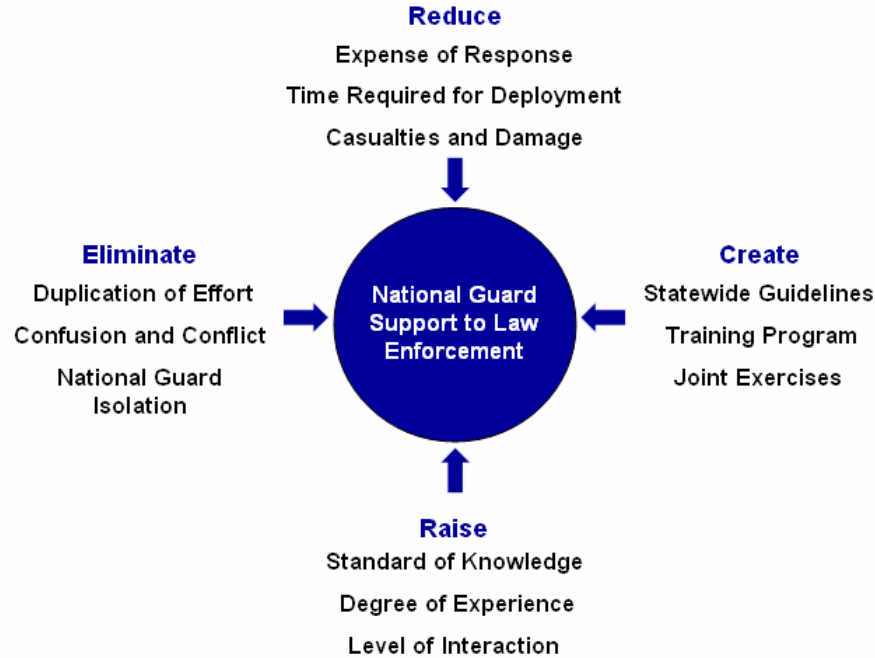


Figure 2. Four Action Framework

### 1. Eliminate

Great emphasis has been placed by law enforcement on DHS grant driven priorities, which do not necessarily improve coordination between law enforcement and the National Guard. The lack of standardized guidelines for California National Guard creates confusion regarding responsibilities that do not promote an effective Incident Command operation. This amplifies the understandable discomfort caused by the fact that the military and law enforcement have differences in terminology, lines of authority and operational priorities.

Major law enforcement operations have a single-agency focus or a regional multi-agency Unified Command. Neither organizational format frequently involves National Guard support. When the National Guard and other military units are utilized they are relegated to the military unit of the operations branch. That means they are far removed from providing input, or having insight into the decision making process. Creating common guidelines, training and exercises should eliminate confusion in future joint operations.

The third problem targeted for elimination is the unnecessary duplication of effort that occurs when law enforcement and the military operate without effective communication, interaction, or common experience based on prior exercises.

## **2. Reduce**

Expense caused by dispatching excessive resources to mutual aid requests based on lack of understanding by the requesting agency can be reduced. The 1992 Los Angeles Riot is an example of an over commitment of the National Guard based on political priorities and a lack of understanding of mission capabilities. Pre-planning and exercises can provide law enforcement leaders and political representatives with realistic estimates of National Guard capabilities.

Time required for appropriate state and federal resources to be deployed in useable quantities can also be reduced. During the 1992 Los Angeles Riot, useful deployments were delayed because troops were sent without ammunition and the logistics to move the ammunition were not thought out. Prior planning and training could reduce the possibility of these oversights.

The most important reduction that can be achieved is in the loss of lives and property. Time lost and money wasted predictably results in a less effective response that could impair the primary mission. Speed and efficiency are critical in major emergency responses. Only adequate preparation for cooperative and coordinated efforts by law enforcement and the National Guard can produce timely and effective action.

## **3. Raise**

Increasing the frequency of training at the Mutual Aid Region level will provide all local jurisdictions and the National Guard the opportunity to interact and problem solve in a NIMS environment. In addition, the exercises could have the added benefit of increasing participation by business and volunteer partners by allowing them to work with government agencies in planning for potential terrorist threats.

The awareness of resources available to local authorities during a mutual aid event and the process for requesting state and federal assistance can also be increased by planning, training and exercises. This awareness can improve efficiency, effectiveness and speed of major mutual aid response requiring state and federal participation.

#### **4. Create**

The object is to work with the Office of Emergency Services and Department of Homeland Security to create guidelines for civil authorities requesting mutual aid. These guidelines should be based on NIMS and address issues of resources, command and control, communication, logistics and other standard operational issues. These guidelines will also need to apply to the California National Guard and serve to inform USNORTHCOM, if they are ever called to respond.

Memorandums of Agreements between law enforcement agencies and military bases within their communities have proven to be effective for years. It is reasonable to expect that statewide agreements would also have a positive impact. The guidelines would require the creation of training programs for the California National Guard, police, fire and public health personnel in the standardized protocols established by OES and DHS.

Training would require the creation of tabletop exercises for National Guard Liaison Officers and local law enforcement personnel with Incident Command roles. The exercises would use realistic scenarios and require interaction with all levels of government within the structure of the new protocols and NIMS. If adequate funding is acquired, full scale operational exercises would enhance the training benefit.

The next section will overlay the traditional methodology of Stakeholder Analysis to what was learned by following the Blue Ocean Strategy.

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## **V. STAKEHOLDER ANALYSIS**

A survey was intended to be the primary source of information regarding the position of essential stakeholders potentially involved in National Guard support of law enforcement. An extensive email survey was sent to California's 58 sheriffs and their Emergency Services managers. The rate of return was only 8% on the mail survey and 4% on the email survey.<sup>45</sup> The responses fell into two categories. Those few who actually responded to the questions indicated that the jurisdictions utilized special units of the National Guard in search and rescue and narcotics eradication efforts. They had a good relationship with the National Guard at that level, but were not certain what to expect in the event of a major response. The larger group of respondents did not respond to the questions because they had no recent experience in utilizing National Guard support. None of the agencies surveyed indicated they had policies, protocols or guidelines governing their interaction with the National Guard as a mutual aid responder.

The limited response to the survey can be attributed to the fact that there has not been a major National Guard response to assist law enforcement since 1992. Very few individuals who were in positions of leadership at that time are still in active service. In order to supplement the survey responses, individual stakeholder interviews were conducted to provide a wider and broader picture of stakeholders' perceptions and expectations regarding National Guard support for law enforcement in California.

The consensus derived from interviews with representatives of the 58 sheriffs and 350 police chiefs reflect that California law enforcement leaders are not confident that they are prepared to integrate the National Guard effectively into a major response to a terrorist attack or natural disaster. They do not train with the National Guard and few have plans or policies that guide their interaction with the National Guard. Law enforcement leaders, National Guard leadership and the Commission on Peace Officers Standards and Training are all supportive of efforts to develop common guidelines, joint training, and improved interaction that will prepare both law enforcement and the National Guard for the potential of a major joint response.

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<sup>45</sup> California State Sheriff's Association (January 4, 2007), survey by author.

#### **A. STRENGTHS, WEAKNESS, OPPORTUNITIES, AND THREATS**

The strengths of California's emergency capabilities begin with its long history of mutual aid within the disciplines of fire and law enforcement. Annual wild land fires, floods, and periodic earthquakes have helped to refine an effective system. The primary weakness is that with the exception of fire responses, there has not been a major federal or military response to civil authorities for 13 years, so any experience gained has been lost to change of personnel.

Based on the results of the literature review and stakeholder analysis the strengths, weaknesses, opportunities, and threats can be identified and categorized. This technique is helpful in identifying the internal and external elements of the current situation, the desired change, and the hopeful outcome of the proposed change. In the following matrix, the current status of law enforcement capabilities for support is compared with the desired state of the relationship between the National Guard and law enforcement. Finally, the actions required to accomplish the desired changes are itemized to create an action plan.

<b>Risk Attribute</b>	<b>“As is” Performance Measures</b>	<b>Value Proposition and Critical Links</b>	<b>“To Be” Performance Measures</b>
<b>Internal Strengths</b>	<ul style="list-style-type: none"> <li>• Mutual Aid</li> <li>• EMAC</li> <li>• Positive local Relationships</li> <li>• Disaster experience</li> </ul>	<ul style="list-style-type: none"> <li>• Build on existing relationships</li> <li>• Create a forum of stakeholders to create standardized protocols</li> <li>• Design training for joint ICS operations</li> </ul>	<ul style="list-style-type: none"> <li>• Mutual Aid incorporating CNG protocols</li> <li>• Agreement on protocols and guidelines</li> <li>• Positive relationships at all layers of response</li> <li>• Training and exercises with all stakeholders</li> </ul>
<b>Internal Weaknesses</b>	<ul style="list-style-type: none"> <li>• Lack of resource database</li> <li>• Lack of experience in CNG assistance</li> <li>• Unclear relationship between OES and OHS</li> <li>• Lack of civil/ National Guard MOA</li> </ul>	<ul style="list-style-type: none"> <li>• Produce resource database with OES, DHS and NORTHCOM</li> <li>• Produce statewide resource inventory</li> <li>• Regional exercises with National Guard</li> </ul>	<ul style="list-style-type: none"> <li>• Complete resource inventory for Incident Commanders</li> <li>• Statewide protocol for civil/CNG responses</li> <li>• Regular interaction through joint exercises</li> </ul>
<b>External Opportunities</b>	<ul style="list-style-type: none"> <li>• State OHS support</li> <li>• State OES support</li> <li>• CNG support</li> <li>• USNORTHCOM liaison</li> <li>• Congressional interest</li> <li>• State Assembly interest</li> </ul>	<ul style="list-style-type: none"> <li>• Involvement of CNG and L.E. in state and regional meetings</li> <li>• Involve stakeholders in revising State Mutual Aid plan</li> <li>• Schedule regular L.E./ CNG exercises</li> </ul>	<ul style="list-style-type: none"> <li>• Regular forum for all stakeholders</li> <li>• Specific mutual aid guidelines supported by local, state and federal responders</li> <li>• Political support at state and federal levels</li> <li>• Full practical compliance with NIMS</li> </ul>
<b>External Threats</b>	<ul style="list-style-type: none"> <li>• Natural disaster</li> <li>• Terrorist attack</li> <li>• Civil Disorder</li> <li>• Withdrawal of funding</li> <li>• Withdrawal of political support</li> </ul>	<ul style="list-style-type: none"> <li>• Design protocols matching each of the 15 threat category listed in the National Response Plan</li> <li>• Regularly test and modify protocols and capability inventories</li> </ul>	<ul style="list-style-type: none"> <li>• Adequate funding</li> <li>• Plans and exercises covering All-Hazards</li> <li>• L.E. and CNG fully prepared to act effectively as a team</li> </ul>

Table 3. Modified SWOT Analysis

The most significant opportunity lies in the sincere interest on the part of the stakeholders to improve their response capability and coordination. The accompanying threat is that the next terrorist attack or natural disaster may occur before adequate preparations are completed. The basic thread that ran through the law enforcement interviews was they wanted to ensure that if California experienced an event that was of such a magnitude that mutual aid resources were not sufficient and the National Guard was required, they would not want to repeat the law enforcement performance during the Los Angeles Riots or Hurricane Katrina.

#### **B. CREATING AN AWARENESS OF THE NEED FOR CHANGE**

Changing the natural inclination to take comfort in the status quo is always a challenge, especially when dealing with organizations with a long heritage such as the military, and many law enforcement agencies. The advantage is in the case of military support to law enforcement, both emergency responders and the public recognize that the status quo failed to provide an optimal use of resources based on the aftermath of Hurricane Katrina. The magnitude of terrorist threats keeps the issue on the forefront. A national directive for agencies at every level to comply with the National Incident Management System creates the expectation that agencies will work together to develop practical and effective procedures for making the national model work at a local level. In many cases that expectation exceeds reality. There is considerable momentum for change at every level, but that will dissipate over time if the opportunity for change is not seized.

The consumers of the mutual aid system in California are the sheriffs, police chiefs, fire chiefs, public health directors, California Highway Patrol and California National Guard who comprise the State's first response capability. Despite their confidence in the mutual aid system, they are aware the military support is not a function that has been utilized to the extent of a major National Guard deployment since the early 1990's.

Exposing legislators and state agency heads to after-action reviews of major exercises will provide an awareness that coordination and mutual understanding between law enforcement and the National Guard needs to improve. Involving key decision makers in Emergency Operating Centers during earthquakes, fires, and floods will expose them to the complexities of major multi-jurisdictional efforts. Inviting them to meet with



the various state law enforcement associations will provide them insight regarding the frustrations that local incident commanders experience when evaluating their ability to react to worst-case scenarios requiring National Guard support.

### **C. IMPLEMENTING CHANGE**

The analytical tools used in the strategy apply to business, but also to the goal of changing the way California approaches a civil/military response to major events. Creating change in one jurisdiction is challenging. Affecting 58 counties and 350 cities, along with state and military partners, requires a carefully thought out plan that focuses on the people, funding, and activities that most impact performance.

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## **VI. ANALYSIS OF ALTERNATIVES**

Specifically defining the responsibilities of the National Guard and law enforcement in a mutual aid environment can be approached at several different levels. The first option is to change the governing legislation empowering and limiting the role of the Guard. The primary advantage would be to create a common all-hazards game plan that would apply to Guard deployments within a state, as part of the Emergency Management Assistance Compact (EMAC), or at the direction of the President. The level of resistance that could be encountered by the states and the complexity and time that would be required reduces the viability of this option. This option would require massive changes on a state, local and national level.

The second option would be to change the federal protocols and guidelines to clearly define the role of the National Guard in assisting law enforcement. This would avoid disadvantages and opposition to changing legislation. It would focus on the more bureaucratic functions of amending existing military publications and the National Incident Management System. The narrower focus makes this option more attractive in terms of the goal of this thesis. It still requires consensus or agreement between branches of the federal government and the 50 states, which is a disadvantage. The implementation impacts will be explored because this option falls within the acceptable range in terms of time and effort.

The third and recommended option proposes achieving the same goal within the confines of the State of California. The elimination of the need to find national agreement or to deal with the specific distinctions governing the National Guard in 50 states makes this a proposal that is readily achievable, while still making a positive recommendation capable of changing the State's response capabilities. If a successful model were established in California, it could provide a template for other states to follow. Because of the promising, and limited nature of this project it will be examined in the greatest detail.

**A. AMEND FEDERAL LAW TO ESTABLISH MANDATORY GUIDELINES FOR NATIONAL GUARD SUPPORT**

This option would require amending Title 10 and 32 of the United States Code, and the Posse Comitatus Act, to establish national guidelines to define the specific responsibilities of the National Guard in supporting local law enforcement. Legislative action to update and clarify the responsibilities of the National Guard in support of law enforcement would require the involvement of the Department of Defense, Department of Homeland Security, Federal Emergency Management Agency, national police, fire and public health associations, and the governors of all fifty states. President Bush has already raised the issue of expanded powers in the aftermath of Hurricane Katrina and the National Governors Association expressed opposition to the federal government posing additional controls on state militias.

The time and degree of political support required to make these changes presents an immense political and administrative challenge. The advantage, however, of a national solution is that even when a governor deploys the National Guard, that governor can also request National Guard assistance from other states. Only national solutions will create compatibility when multiple National Guard units respond to a single local event. A more careful analysis will be reserved for the following two options, because of their greater likelihood of being successfully supported by the critical participants.

**B. AMEND THE NATIONAL RESPONSE PLAN AND NATIONAL INCIDENT MANAGEMENT SYSTEM**

This option would entail amending the National Response Plan and National Incident Management System, within existing law, to establish protocols that specify the responsibilities of the National Guard, when supporting local law enforcement.

This option could resolve inconsistencies between civil and military responders through administrative rather than broad legislative remedies. Administrative changes would require the involvement of national police associations to make recommendations intended to expand the process of information gathering and foster public debate. NIMS is a relatively new mandate for the states and the National Guard and will undoubtedly be subject to modification as more agencies comply.

A national protocol would require the agreement of 50 governors who have authority over their National Guard units. There is already strong disagreement about the growing powers of the federal government. The beginning of this effort could be the establishment of appropriate protocols in a single state that can be adopted by the remaining states. As an example, California's State Emergency Management became a model for the development of the National Incident Management System. It could also be established through a committee process through the National Governor's conference. This may receive more support by the governors than the imposition of a national administrative or legislative standard. On the other hand, it may be difficult to find consensus between states. However if agreement was achieved, it may be possible to establish clear protocols for civil authorities and the National Guard in a reasonable period of time.

### **1. Inputs**

It is reasonable to expect that FEMA and DHS would be the key advocates of any legislation creating mandatory operational protocols to supplement the provisions of NIMS and the National Response Plan. The participation of states, Department of Defense, National Guard Association and the key national law enforcement associations would also be important. Agency efforts coupled with legislative staff participation would be needed to create recommendations to forward to the congressional sponsors.

### **2. Output**

The output would be legislation creating specific mandatory protocols for the implementation of the operational provisions to supplement the National Incident Management System. The provisions of the legislation would need to be reflected in a document that would join NIMS and the National Response Plan as a guiding document for federal, state and local emergency responders.

### **3. Outcomes**

The outcome would be a national integration of emergency responders that would standardize command and control, communications, and tactical protocols. An event of national significance, such as Hurricane Katrina would benefit from a multi-jurisdictional response in which all participants were educated in common terminology, communications, command structures and tactics. Negative outcomes could realistically

include serious opposition by the states. Several Governors have already expressed concern with the Federal influence over their National Guard units. There could also be resistance based on the financial implications of any national standards and conflict with the differing laws and governmental structures present in the states.

#### **4. Benchmarking Plan**

The national emergency response protocols of other democracies would be valuable as comparisons to proposed guidelines for emergency responders. The Rand Corporation evaluated the terrorist response systems of Israel, France, Germany, Australia, and Great Britain.<sup>46</sup> A similar comparison of allies would be beneficial in determining the value of recommended policies for this country to guide the support of our military. A secondary component of this process would be evaluating which practices of other nations might be applicable if they had our system of strong state's rights.

It would also be helpful to compare specific provisions of the mutual aid policies regarding civil/military interaction would be the targets of the benchmarking effort. If there were information regarding the success of implementing those policies and practices available, that data would provide valuable insight.

#### **C. EXPAND THE CALIFORNIA MUTUAL AID PLAN**

The recommended option is to expand the California Law Enforcement Mutual Aid Plan to include protocols and training requirements for National Guard support for law enforcement in the event of a terrorist attack, domestic disorder, or catastrophic natural disaster.

This option would be limited to California and would not avoid some of the national issues that would require legislation or federal administrative action. By restricting the project to a specific state, a realistic number of stakeholders could actively participate in the process of identifying, testing, and recommending change. The stakeholders currently operate under a clearly understood and frequently tested mutual aid system, but it is largely silent on specific interaction with the National Guard, with the exception of deployment guidelines.

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<sup>46</sup> U.S. General Accounting Office, *COMBATTING TERRORISM: How Five Foreign Countries are Organized to Combat Terrorism* (Washington, D.C., GAO, April 2000).

California has frequent natural disasters and periodic episodes of civil unrest. It has four high-risk urban centers, which include Los Angeles, San Francisco, San Diego, and Sacramento. The Center for Asymmetric Warfare, which organized the AWI-03 exercise, is based in Port Hueneme and has agreed to test recommendations from this project into a future regional training exercise. California has a large National Guard and many military bases, so there is a strong interest in the issue of National Guard support in the event of a major attack or natural disaster.

Bringing together stakeholders under the authority of the Office of Emergency Services could result in the development of specific agreements for interaction between law enforcement and the National Guard. These protocols could be designed for each of the foreseeable major threat categories. The results could become part of California's Mutual Aid Guidelines and could be included in training for Incident Command personnel.

The development of protocols will promote agreement, greater communication and understanding. It must be coupled with training to ensure the lessons learned will be applied in an actual event. California is divided into mutual aid regions that could easily serve as exercise sites to reinforce the curriculum on National Guard support to law enforcement. The involvement of National Guard Liaison Officers in each exercise will bring valuable military perspective to the process, and will create personal trust and relationships with law enforcement Incident Command personnel. This process would be further developed if the National Guard routinely provided a Liaison Officer to work in the law enforcement Emergency Operating Center during actual law enforcement activations. Restricting training simulations to tabletop exercises will limit both costs and scheduling problems, but is not as desirable as full scale exercises. A desired outcome would be to create command leadership teams representing key regional stakeholders who know each other and train together on a scheduled basis, rather than the historic approach of bringing together strangers from agencies with differing practices to deal with a true crisis.

## **1. Inputs**

The input required to create standardized and integrated protocols for utilizing the California National Guard to assist local authorities is minimal. The direct costs would

include travel, food and lodging for the stakeholders participating in forums. If the protocols required training, the costs could be considerable depending on whether command and control personnel, or all possible law enforcement and military personnel, are included. Restricting the training to regional tabletop exercises focusing on personnel likely to be assigned to an Incident Command role would be far more affordable.

Since much of the work can be performed off-site, the process may require several days in-residence for approximately fifteen agency representatives, the majority of which have their offices in Sacramento. There would also be a direct cost for updating the Mutual Aid guidelines, printing checklists for specific hazards, and distributing capability and resource lists of National Guard and law enforcement assets.

Capability lists are currently available within many of the affected agencies and only need to be collected and incorporated in state mutual aid documents distributed to incident commanders. The final direct cost would be the funding for regional tabletop exercises involving local, state and federal responders, most of which would be managers on fixed salaries.

The key non-monetary input would be the time required to build political and agency support and coordinate stakeholder discussions leading to the production of statewide mutual aid protocols specifically addressing National Guard support of law enforcement. Additional time will be required to test the protocols and build experience through exercises in each of California's mutual aid regions.

## **2. Outputs**

The outputs are tangible. The production of a Memorandum of Agreement between the National Guard, Office of Emergency Services, Office of Homeland Security, and California's police chiefs and sheriffs is the primary output. As part of this document, a broad listing of agency capabilities related to each of the threat scenarios addressed in the National Response Plan should be included. Organizational chart templates for the various threat scenarios should be included as a guideline defining agency responsibilities. The final output will be training and a series of exercises directed at teaching local, state and National Guard responders to work through scenarios in keeping with the new protocols.



### **3. Outcomes**

The desired outcome is the creation of standardized response protocols to provide practical guidance for California law enforcement and military responders that will allow them to work effectively in an integrated command and control environment. This outcome can be measured in several ways. First, production of the newly expanded mutual aid protocols is a measurable product, as is the production of training materials and the number of training sessions and exercises provided. Secondly, the knowledge of the materials can be tested, and the performance of command and control personnel can be evaluated in training exercises and simulations.

It is not anticipated there will be any meaningful resistance from the stakeholders to the standardization of emergency response protocols, but other outcomes can be expected. The California State Legislature, local law enforcement and the National Guard will have to wrestle with the cost of producing the product, instruction, testing and training. It is likely funding might be a shared responsibility of the state and local government.

Another outcome will be the numbers of people agencies are willing to commit to the process, at the expense of other responsibilities and their own budgets. This outcome will have less impact if the training involves primarily management personnel with command and control responsibilities, since they do not generate overtime costs. A positive offsetting outcome will be the gain in confidence that stakeholders can rely on each other in a unified effort requiring both speed of response and effective use of resources. From a political standpoint, all parties should experience public support for efforts to better prepare California communities for major emergencies.

### **4. Benchmarking Plan**

The target of benchmarking would be the existence of state protocols for Civil military emergency responses, especially as they relate to the National Guard and military bases within each state. The degree to which these standardized protocols are documented, understood and tested through training should also be measured where possible.

The logical point of comparison would be the Offices of Emergency Services for each of the other 49 states. It has already been determined the State of Illinois has an active project. A site evaluation would provide a point of comparison to California's current state of readiness and the desired outcome. A poll of the OES Directors could produce information for comparison with the remaining states.

A secondary approach would be to determine if USNORTHCOM, DHS or FEMA have participated in efforts to create statewide protocols governing the relationship between civilian authorities and military responders. Any product produced in cooperation with other states should be helpful in producing protocols designed to meet California's requirements.

## **VII. IMPLEMENTATION STRATEGY**

The recommended option must be accompanied by a clear implementation strategy. Homeland Security grant funding is being concentrated into four high-priority urban regions in California. The majority of law enforcement agencies are left without resources for expanded programs related to homeland protection. It is unlikely increased funding will become available, so it will take action by the Governor and the Office of Emergency Services to prioritize the standardization of state mutual aid protocols governing civil/military interaction and then train incident commanders in the guidelines and agreements. The truth is most agencies have purchased the critical equipment they need to protect their officers in the case of a chemical or biological attack. Much of the funded training is of local value only and does not address the need for a major National Guard response.

Recommendations and potential solutions by the law enforcement/National Guard stakeholders' committee and the California Office of Emergency Services can be strengthened by combined support by the California State Sheriffs' Association and California Police Chiefs' Association. Prior discussions with the Homeland Security and Office of Emergency Services directors will help to make the case that this effort is a priority. Statewide training is necessary because the terrorist's target is not predictable and every major agency needs to be prepared to effectively use National Guard assistance.

Another way of accomplishing the mission within existing resources is to limit the training to key personnel in every mutual aid region who would have significant decision-making responsibilities within an Emergency Operating Center. It would be a luxury to train all first responders, but integration with the military is primarily a command and control issue, and equipping people who work within that framework would be sufficient and would dramatically reduce costs.

### **A. CREATING MOTIVATION**

Significant motivation to succeed in joint responses to major emergencies already exists. In an environment of 24/7 cable news, populated by expert critics, neither law

enforcement, fire, or the military want to endure the level of criticism that followed Hurricane Katrina. A process to follow and the certainty that political endorsement and resources will support the effort are essential to creating a standardized command and control protocol for law enforcement/National Guard responses.

One strategy is to initially enlist key stakeholders as a means of encouraging others to participate in order to avoid an unfavorable comparison. If the Governor and Offices of Homeland Security and Emergency Services commit to proceeding with the project, it will be difficult for other stakeholders to abstain. If the National Guard and the state associations for sheriffs and police chiefs join the effort, it would raise serious media and political issues for agencies that refrained from participating in training or exercises. An additional strategy is to break the challenge into incremental steps that are very achievable. The task of getting a large and diverse set of stakeholders to agree on common protocols can appear daunting, but once broken down into specific action steps it is no longer intimidating.

## **B. CREATING POLITICAL SUPPORT**

Political support is essential to the success of this effort. The path of ensuring support is clear, if not easy to achieve. All of the stakeholders, with the exception of USNORTHCOM, depend on the Governor, Office of Homeland Security and the Joint Terrorist Task Forces for access to Homeland Security grant funding. The California Sheriffs' Association and California Police Chiefs' Association are represented on the task forces and their recommendations carry significant influence. The process of conducting interviews as part of researching this thesis turned out to be an effective method to begin building political support. As the problems and proposals were discussed, key stakeholders freely expressed unsolicited support for the proposal. Their comments are recorded as an indication of existing political support and a reflection on how efforts to obtain additional support may be received.

The cooperation of the Governor's law enforcement liaison is vital to helping forge alliances among the key state stakeholders, because he has knowledge of the personalities and agencies' priorities. The creation of a key support group will provide momentum to the project, and making a public announcement of the Governor's support will assure the project will continue to completion. The Governor's staff can also help to

identify detractors and their concerns, so they can be mitigated. The creation of a strong coalition for change and early media attention to the effort would make it difficult for important stakeholders to resist the change. The State Assembly's Emergency Services committee is also an important voice that should be included in the coalition for change.

There is every reason to believe the majority of political; law enforcement, and National Guard leaders will support the effort to standardize joint responses based on a desire to improve public safety. When a strong coalition, with support of the Governor, joins the effort it will assure all of the stakeholders, except the most ardent detractors, participate in the effort.

The Governor's Public Safety Liaison is a former county sheriff with considerable experience in local law enforcement and state government. He agreed to assist in the development of this concept and provided additional contacts in the National Guard and Office of Emergency Services. He advised that the lead agency on any statewide law enforcement and military implications should be either the Office of Emergency Services or the Office of Homeland Security. He further offered the support of his office.<sup>47</sup>

The Chief of the Office of Emergency Services, Law Enforcement Branch, was interviewed regarding his observations and recommendations regarding the concerns and proposals contained in this paper. He stated California does not have standing State Terrorism Task Force, but did have a temporary Strategic Committee on Terrorism following the attacks of 2001.<sup>48</sup>

The Chief confirmed the State Mutual Aid Guidelines cover only the following topics in regard to military support for local authorities: legal authorities and responsibilities of the National Guard, conditions of availability of National Guard resources, authority of the Governor to deploy the Guard to emergency without a local request, limitations on missions accepted by the CNG, role of OES in processing requests, and the timetable for deployment of a Liaison Officer and additional assistance. He confirmed the Mutual Aid Guidelines do not provide an inventory of military

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<sup>47</sup> Tom Sawyer (Governor's Law Enforcement Liaison, Sacramento, CA) interview by author, November 12, 2006.

<sup>48</sup> Charles Simpson (Office of Emergency Services, Monterey, CA), interview by author, October 4, 2006.

capabilities, although the National Guard does possess the information and it is available upon request from local authorities. The Guidelines also do not describe the role of a military Liaison Officer in the ICS/ Unified Command environment, although military officers can access a three-day training program related to the role. There is also an Administrative Order governing what California agencies, including the CNG, can provide in terms of assistance to local authorities. Information regarding CHG restrictions and capabilities are not part of the published Law Enforcement Mutual Aid Plan.

The Chief also agreed modest training exercises for each Mutual Aid Region would be an appropriate way of introducing interaction between National Guard Liaison Officers and law enforcement stakeholders. He believes there is value in adding input from the military and homeland security stakeholders to the information provided in the Law Enforcement Mutual Aid Plan. Universally applicable protocols, guidelines and requests could provide important guidance to local authorities. Finally, he was supportive of using the input of associations representing local authority to educate the military on the practical aspects of applying NIMS in a local response.

The Director of the Office of Homeland Security is another critical stakeholder in any effort to further define the relationship between the California National Guard and local law enforcement. He has experience with a highly active state Joint Terrorism Task Force in Illinois and was interviewed regarding his experience in both Illinois and California.

The Director expressed that in addition to the CNG response to the 1992 Los Angeles Riots there have been more contemporary major deployments of the California National Guard.<sup>49</sup> The Guard has been deployed twice to provide additional security at California's major airports following the 9/11 attacks. The Guard was deployed under Title 32, which entitled the troops to exercise law enforcement powers while being paid by the federal government. The other contemporary major response was "Operation Jump Start" during which the Guard was deployed to assist the Immigration and Custom Enforcement agents in securing the border with Mexico. Neither of these deployments resulted from a mutual aid request from local law enforcement.

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<sup>49</sup> Matt Bettenhausen (California Office of Homeland Security), interview by author, November 30, 2006.

The Director agreed that there was merit to assembling a stakeholder group including the Office of Homeland Security, Office of Emergency Services, National Guard, and law enforcement representatives to plan for future joint operations. He believes that the Offices of Homeland Security and Emergency Services should appropriately take the lead in the effort. The potential areas he believed could benefit from a joint planning effort were discussed, including command and control, communications, logistics, unified command, and mission oriented requests. He added that the Adjutant General, of the California National Guard previously discussed the need for collaboration with local law enforcement before the next major joint response occurs.

The Brigadier General of the California National Guard reviewed the main elements of the proposal and offered the support of the CNG. He stated that the 92 Los Angeles Riots revealed the flaws in both law enforcement and the California National Guard in terms of military support to civil authorities. The CNG worked with LAPD and LASO in a training exercise called Angel Gate 93 in order to learn lessons from the response to the 1992 riots. The General felt that it was a productive experience, but it only applied to one region and the value has been eroded by the passage of time.

The General explained that the CNG has 15,700 troops, of which 11,000-12,000 could be available to assist local law enforcement. If the event were multi-jurisdictional, the deployment would have to triage according to priority. He welcomed the opportunity to meet with stakeholder groups at the state and regional level to share information and pre-plan responses to ensure the most effective joint effort. He did not express any concern over the cost or scheduling impact of joint meetings or tabletop training exercises. He was also very interested in supporting active interaction between CNG liaison officers and Incident Command law enforcement personnel on a regional basis. The General stated preparation for joint law enforcement/military responses to terrorism requires a “cultural attitude shift.”<sup>50</sup> He felt the interaction created by the proposed recommendation could foster that process. The General’s perspective is also enhanced by

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<sup>50</sup> Louis Antonetti (Brigadier General, California National Guard, Sacramento, CA), interview by author, December 29, 2006

the fact that he served as FEMA's Executive Associate Director for Response and Recovery Directed Operations, and also the Director of the National Guard Bureau's National Interagency Civil-Military Institute.

The California Commission on Peace Officers Standards and Training (POST) sets training guidelines for state law enforcement agencies and audits compliance with those guidelines, along with providing financial reimbursement as specified by law. After discussing the recommended proposal, the Assistant Executive Director stated that he believes that this project touches on a "crucial issue" in California.<sup>51</sup> He said three governors have unsuccessfully attempted to qualify the CNG personnel to be able to enforce state law. California law requires that individuals complete 64 hours of training to exercise police powers, under section 832 of the California Penal Code. National Guard units train under a schedule established to reflect national priorities and they do not have the funding or ability to deploy large numbers of personnel for non-mandated training. Any training related to military support of law enforcement would have to compete with the Guard's other training demands in a time of war. The Assistant Director agreed that many of the lessons learned from the experience of the Los Angeles Riots had never been fully resolved and could recur if another major deployment was needed.

The Assistant Director point out that joint training would be a routine matter for law enforcement personnel. Depending on the number of participants, regional training for joint responses may not require additional funding. He also pointed out that some CNG units have police officers on their rosters and at least have a representative who can exercise police powers under their state authority. He agreed that both training and exercises that focused solely on the command and control issues related to joint operations would be less expensive and possibly more compatible to the CNG's training priorities and schedules. He concluded by stating that P.O.S.T. would support any effort to provide training that would enhance the Guard's ability to support local law enforcement.

The Commissioner of the California Highway Patrol discussed this proposal in concept and agreed with the need of pre-planning for a National Guard response. He has

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<sup>51</sup> Michael DeMichelli (Assistant Executive Director, Commission on Peace Officers Standards and Training, Sacramento, CA), interview by author, December 26, 2006.



expressed the need for advanced preparation in the past. He expressed his agency's support for the recommended proposal and stated the C.H.P. would be a partner in any effort to create statewide guidelines.<sup>52</sup>

With initial political support from the required state offices and agencies, the remaining support must come from California's law enforcement community. At the quarterly meeting of the California State Sheriff's Association the elements of this proposal were discussed. Approximately 40 of the 58 California Sheriffs were in attendance. The consensus was that these agency heads, who are responsible for policing half of the state population, were not comfortable with their understanding of their department's interaction with the CNG in a major response environment. They felt that standardized guidelines for military and law enforcement agencies would be a valuable tool for fostering cooperative military support responses. The Executive Director agreed to submit a letter in support of the recommended proposal to the Governor.<sup>53</sup>

The President of the California Police Chiefs' Association offered the support of California's 350 police chiefs to any effort to create standards, plan and train for military support from the CNG. His assessment was that the reorganization of the California Office of Emergency Services and the Office of Homeland Security would be an opportunity to incorporate the National Guard. He further stated there is "great value in some pre-planning and, if nothing else, people getting in the same room and forming some partnerships."<sup>54</sup> He also offered that the National Guard response to reinforce our borders would have benefited from the same type of planning effort with border law enforcement agencies.

The process of measuring political support has actually created support. Each succeeding interview gained momentum from the fact that other stakeholders had

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<sup>52</sup> Mike Brown (Commissioner California Highway Patrol, Sacramento), interview by author, December 8, 2006.

<sup>53</sup> Steve Stavley (Executive Director, California State Sheriffs' Association), interview by author, Ventura, CA, September 28, 2006.

<sup>54</sup> Steve Krull (President, California Police Chiefs' Association), interview by author, January 11, 2007.

expressed support. Decision makers from key agencies have already taken positive positions and could comprise the nucleus of a committee to begin the process of implementing the recommended option.

### **C. IMPLEMENTATION PLAN**

The preferred option has been identified and political support from the critical stakeholders is building as a result of the interview process. In order to take advantage of the positive momentum, a specific set of action items need to be proposed to other stakeholders. The following implementation steps are listed in the order that would most likely lead to achieving the desired change:

#### **Action Items**

1. Gain the formal support of the Governor, Office of Emergency Services, Office of Homeland Security, and the National Guard to establish a stakeholder committee for creating statewide guidelines for National Guard support of local law enforcement, within the parameters of the National Incident Management System.
2. Request the Governor issue an Executive Order to assign responsibility to the Office of Emergency Services to develop standards, guidelines and training for the National Guard related to support of law enforcement authorities.
3. Task a committee under the Office of Emergency Services to recommend military support guidelines for both law enforcement and the National Guard. This committee should include the State Sheriffs' Association, State Police Chiefs' Association, Commission on Peace Officers' Standards and Training, California Highway Patrol, and USNORTHCOM, in addition to the initial agencies approving the committee process.
4. Present recommendations to the Office of Emergency Services, Homeland Security and the Adjutant General of the National Guard for final amendments and presentation to the Governor for approval.
5. Assign the Commission for Peace Officers' Standards and Training to create a training program for law enforcement and military command and control personnel. The training could be a qualification for a certification qualifying personnel for Incident Command assignments.
6. Request the Governor and California's legislative delegation support National Guard funding and scheduling requirements to conduct training and associated exercises for military personnel who serve as the Liaison Officers (LNO) to law enforcement.

7. Request that the Governor requires the California National Guard to train their emergency responders in accordance with state law, so that they qualify to enforce the Penal Code in support of a law enforcement role.
8. Identify training funds from existing budgets or from additional appropriations to the P.O.S.T. budget for law enforcement training and exercises. Additional appropriations will require the support of the Governor and State Legislature.
9. Schedule training at the mutual aid region level, which includes the National Guard and the law enforcement agencies within each region. Since the protocols relate primarily with the command and control element of the State Emergency Management System, tabletop scenarios with the same personnel who might be identified as having an ICS role or be assigned as a Liaison Officer in the event of an actual deployment should be sufficient. The objective will be to produce experienced command and control teams composed of both law enforcement and National Guard personnel.

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## VIII. CONCLUSION

The legendary football coach Vince Lombardi used to say that the will to win is not the most important thing; the will to prepare to win is the most important. Anyone who gets into a fight wants to win, but if he hasn't prepared ahead of time, he will be at a distinct disadvantage. Similarly, in our fight against terrorism, we must prepare to win. We must prepare for the next attack...<sup>55</sup>

This thesis began with a quotation from former Attorney General John Ashcroft, followed by a metaphor taken from the world of sports. It will conclude in the same way. Attorney General Ashcroft lived through the difficult days following 9/11, when the role of the FBI and other intelligence agencies were being quickly redefined. He presided over the investigation of the attacks in New York, Washington D.C. and Pennsylvania. He struggled with the knowledge that an unknown number of terrorists could still be planning domestic attacks. Through all the uncertainty, he was motivated by the memory of innocent people hurling themselves out of the windows of the World Trade Center to escape the flames. His zeal for his job was also fueled by the knowledge that we faced an enemy who would never stop trying to destroy us, no matter how long it took. If we had the same clarity and memory today, we would address our responsibility to plan, train, and practice together with a sense of urgency. Whether we are dealing with an Olympic basketball team, a law enforcement SWAT team, or a military unit preparing for battle, the following basic elements are required to ensure success.

### A. HAVING A COMMON PLAYBOOK

The National Incident Management System and National Response Plan have clearly defined the roles of federal and local agencies in the event of a terrorist attack or natural disaster, but they do not address the myriad of operational issues that are critical to an efficient multi-level emergency response. The California National Guard operates under state law and the control of the Governor in their Title 10 status and does not function exactly like the active duty military or the National Guards in other states.

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<sup>55</sup> John Ashcroft, *Never Again: Securing America and Restoring Justice* (Center Street, New York NY: Townhall.com, October 2006), 281.

The process to develop guidelines proposed here for law enforcement and the CNG will help them standardize responses to civil requests anywhere in the state. The involvement of all stakeholders, prior to an actual deployment, could resolve many potential conflicts regarding command and control, logistics, communications, training, terminology, processes, and chain of command. These guidelines would require the reinforcement of a training process for both law enforcement and the CNG.

#### **B. CONDUCTING EFFECTIVE AND FREQUENT PRACTICE**

A survey of California's 58 sheriffs, and input from a representative of the 350 police chiefs, revealed that jurisdictions desire greater participation with the California National Guard in planning and exercises designed to equip both entities for a major deployment of military personnel or the participation of the CNG in a Unified Command in support of law enforcement.

Both law enforcement and the military understand successful actions require realistic training and the value of such training erodes with time. The recommended option proposes that, at a minimum, the CNG participates at the mutual aid region level with law enforcement Incident Commanders in training exercises scheduled on a recurring basis.

#### **C. KNOWING AND DEVELOPING TRUST IN YOUR TEAMMATES**

Guidelines and systems are of great value, but at any level of endeavor a team functions most effectively when individual participants develop a relationship of trust based upon common knowledge and experience. A military unit or specialized law enforcement team would never consider entering a dangerous situation that required them to rely on people they do not know or have earned their confidence. In addition to training and practicing as organizational units, this proposal recommends training with a select group of law enforcement personnel and a designated Liaison Officer assigned to that mutual aid region.

#### **D. CONCLUSION**

Lieutenant General Russel Honore was the Joint Task Force Commander who provided the most visible and effective leadership in the days immediately following the devastation caused by Hurricane Katrina. In response to an inquiry about what he thought law enforcement should know about National Guard support, he stated that based on his

experience, “The first responders and any other response organization should have exercised and collaborated before the storm. The scene of a disaster is not the place to exchange business cards.”<sup>56</sup> He also recommended that coordination between law enforcement and the National Guard could be improved by threat specific planning accompanied by training in which potential participants are stressed to the point of failure.

California’s law enforcement and military responders cannot afford to ignore the lessons learned from prior events. We will have to rely on National Guard support for law enforcement in future catastrophic events as we have in the past. The residents of this State have a right to expect an effective, coordinated and rapid response to a life threatening disaster. Only by beginning to plan, train and exercise together can law enforcement and the California National Guard fulfill their obligation to be at their best when the need is the greatest.

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<sup>56</sup> Lt. General Russel Honore, U.S. First Army, Interview by author January, 22, 2007.

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